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**(2018) 07 CHH CK 0242**

**Chhattisgarh High Court**

**Case No:** Miscellaneous Criminal Case (MCRC) No. 3719 Of 2018

Birbal Yadav

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** July 19, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 363, 366A, 376
- Code Of Criminal Procedure, 1973 - Section 439
- Protection Of Children From Sexual Offences Act, 2012 - Section 4, 6

**Hon'ble Judges:** Sharad Kumar Gupta, J

**Bench:** Single Bench

**Advocate:** Ashish Gupta, Dheeraj Wankhede

**Final Decision:** Allowed

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**Judgement**

Sharad Kumar Gupta, J

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and no other bail application is pending

before any other Court.

2. Perused the case diary provided by the learned counsel for the State in connection with crime No. 65/2018 registered at Police Station - Kotra

Road, District - Raigarh (C.G.) for the offence punishable under Sections 363, 366A, 376 of the Indian Penal Code and Sections 4 and 6 of the

Protection of Children from Sexual Offences Act, 2012.

3. Case of the prosecution, in brief, is that the date of birth of the prosecutrix is 07.06.2000 and resident of village - Patrapali, District - Raigarh. There

was a love affair between the applicant and the prosecutrix. On 14.03.2018 she compelled the applicant, he took away her. Thereafter, she went along with the applicant. They lived together in village Gerwani, where they had physical relations.

4. The applicant is in custody since 18.03.2018.

5. Learned counsel for the applicant submits that the applicant has no criminal background. He is innocent and has been falsely implicated in the present case, therefore, he shall be released on bail.

6. On the other hand, learned counsel for the State opposes the bail application, however, he submits that there is no antecedent against the applicant.

7. In the certified copy of the statement of the prosecutrix taken by the Trial Court she had stated that she had gone to her Badi Mummy Nohar Bai at Kirodimalnagar without intimating any of her family members. The applicant has not committed anything with her.

8. Looking to these facts and circumstances of the case, looking to the fact that there is no antecedent against the applicant, there is no likelihood of the accused to abscond and tamper the evidence, the trial will take its own time, this Court is inclined to give benefit of Section 439 of the Cr.P.C. to the present applicant.

9. Accordingly, the present bail application filed under Section 439 of the Cr.P.C., is allowed.

10. It is directed that if the applicant furnishes one solvent surety for a sum of Rs.20,000/- along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that he will appear before the Trial Court at 11:00 am as and when directed till trial and he would cooperate during the trial, he shall be released on bail.

11. Certified copy as per rules.