

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6395 of 2016

Pawan Markandey S/o Shri Awadh Ram Markandey Aged About 21 Years R/o
Sarkanda, Police Station Panduka, District Gariyaband Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Panduka,
District Gariyaband, Chhattisgarh

---- Respondent

For Applicant	:	Shri Rajesh Kumar Tiwari, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/10/2016

Heard.

1. The applicant is arrested in connection with Crime No. 129 of 2015 registered in Police Station- Panduka, District- Gariyaband, for the alleged commission of offence under Sections 363, 366, 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant kidnapped and committed rape on the prosecutrix who is less than 18 years of age.
3. Learned counsel for the applicant submits that the prosecutrix's statement under Section 164 Cr.P.C. clearly shows that the prosecutrix and the applicant performed marriage in Aarya Samaj temple and thereafter they started living together as husband and wife and the report was lodged at the time when the prosecutrix was carrying pregnancy of 8 months. He submits that even according to prosecution, the prosecutrix was more than 17 years of age, therefore, commission of sexual intercourse after performing marriage cannot

be said to be rape in view of the provision contained Section 375 IPC. According to prosecutrix, there was no compulsion and she performed marriage and started living with the applicant of her volition.

4. On the other hand, learned counsel for the State has opposed the bail application and submitted that as the prosecutrix is less than 18 years of age, consent has no meaning and the story of marriage has been first disclosed in the statement under Section 164 Cr.P.C. but not in the FIR and 161 Cr.P.C. statement.
5. Taking into consideration the submissions made by learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix recorded under Section 164 Cr.P.C. with regard to solemnization of marriage and thereafter allegation of sexual intercourse and that she is said to be between 17 to 18 years of age and further considering that the investigation is complete and charge sheet has been filed, the application is allowed.
6. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- along with one local surety for the like amount to the satisfaction of the concerned trial Court with following further conditions:
 - (i) that the applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
 - (ii) that the applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge