

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6638 of 2016

Sanjay Vishwakarma S/o Ramdulare Vishwakarma Aged About 22 Years R/o Village Atari, Nandanwan Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Kabir Nagar, Raipur, District- Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Kishore Narayan, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. Govt. Advocate

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

Order On Board

24/10/2016

Heard.

1. The applicant has been arrested on 14.4.2016 in connection with Crime No. 82 of 2016 registered in Police Station- Kabir Nagar, Raipur, District- Raipur for the alleged commission of offence under Sections 363, 366 and 376 IPC and Section 3, 4 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant kidnapped and raped the prosecutrix who is a minor.
3. Learned counsel for the applicant submits that even according to statement of the prosecutrix under Section 164 Cr.P.C., she had an affair with the applicant and she went along with the applicant to another place and thereafter performed marriage with the applicant without any compulsion. The statement of the prosecutrix also shows that it is only after the marriage was performed, the applicant and prosecutrix had entered into physical relation. Therefore, the applicant may be released on bail.

4. On the other hand, learned counsel for the State has opposed the bail application and submitted that as the prosecutrix is less than 16 years of age, the consent is inconsequential. The applicant is, therefore, not entitled to grant of bail.
5. Taking into consideration the submissions made by learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix according to which, the sexual intercourse was maintained between the parties only after performance of marriage and the provision contained in exception-2 of Section 375 IPC, 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) The applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
 - (ii) 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