

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.6697 of 2016**

- Vijay @ Rahul Sarthi S/o Rohit Sarthi Aged About 20 Years R/o Village, Kharod, Police Station : Sheorinarayan, District : Janjgir - Champa Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through : Station House Officer, Police Station : Arang, District Raipur Chhattisgarh

---- Respondent

For Petitioner	:	Shri P. K. Patel, Advocate
For Respondent/State	:	Shri D. R. Minz, Dy.GA

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****24/10/2016**

Heard.

2. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.174/2016 registered at Police Station Arang, District Raipur for the offence punishable under Section 363, 366 & 376 of IPC and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012. The applicant has been arrested on 31-07-2016.

3. Case of the prosecution is that the applicant kidnapped the prosecutrix and at that time, she was minor and thereafter, it is alleged that rape was committed on her.

4. Learned counsel for applicant submits that even according to the statement of the prosecutrix recorded under Section 164 Cr.P.C., the prosecutrix insisted the applicant to take along with him, failing which, she

would commit suicide and thereafter, she went along with the applicant to different places and later on, the applicant and the prosecutrix performed marriage. It is submitted that the allegation of having committed sexual intercourse is only after performance of marriage and therefore, in view of provision contained in exception (2) of Section 375, no case is made out because the prosecutrix, at the relevant time, was more than 15 years of age.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that looking to the nature of grave offence, the applicant is not entitled to bail.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the submission of learned counsel for the applicant that in the statement of the prosecutrix recorded under Section 164 of Cr.P.C., allegation of sexual intercourse is only after the performance of marriage and further taking into consideration the provision contained in exception (2) of Section 375 of IPC, the application is allowed.

7. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- along with one local surety of the like amount to the satisfaction of the trial Court. He shall appear before the trial Court regularly on each and every date, unless exempted.

SD/-

(**Manindra Mohan Shrivastava**)

J U D G E