

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6732 of 2016

Shekhar Rathaur S/o Shankar Lal Rathaur Aged About 25 Years R/o
Puraina, Charpara, Thana - Kharsiya, District Raigarh Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through : Thana - Champa, District - Janjgir - Champa
Chhattisgarh

---- Respondent

For Applicant	:	Shri Samir Singh, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. G.A.

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

Order On Board

02/11/2016

Heard.

1. The applicant has been arrested in connection with Crime No. 41 of 2016 (wrongly mentioned in order sheet as 571/2016) registered in Police Station- Champa, District -Janjgir-Champa (C.G.) for the alleged commission of offence under Sections 363, 366, 376 of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution is that the applicant kidnapped and committed rape on prosecutrix which is minor in age.
3. Learned counsel for the applicant argues that even according to the prosecution, the age of the prosecutrix at the time when she solemnized marriage with the applicant is more than 16 years of age. The allegation of prosecutrix having been subjected to sexual intercourse is only after solemnization of marriage as per the prosecutrix's statement under Section 164 Cr.P.C., therefore, case of rape is not made out. He submits that as the investigation is complete and charge sheet has been filed, the applicant may be granted bail as he is not likely to abscond or tamper with the prosecution

witnesses. Therefore, he may be granted bail.

4. On the other hand, learned counsel for the State has opposed the bail application and submits that consent is not material as prosecutrix is less than 18 years of age and the fact that the prosecutrix and her father both have filed affidavit in favour of the applicant which is produced in these proceedings shows that the applicant is tampering with the prosecution witnesses therefore, if he is released, it will adversely affect just and fair trial.
5. Considering the aforesaid totality of the circumstances, particularly taking into consideration the statement of the prosecutrix under Section 164 Cr.P.C. that the sexual intercourse between the prosecutrix and the applicant took only after solemnization of marriage and at that time, the prosecutrix stated that more than 16 years of age and further taking into consideration the provision contained in exception 2 of Section 375 IPC, I am inclined to grant bail to the applicant. Therefore, 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.20,000/- 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