

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6743 of 2016

Shailendra Kumar Patel S/o Babulal Patel Aged About 23 Years R/o Village
Goinda Police Station Arang, District Raipur Chhattisgarh

----Applicant

Versus

State Of Chhattisgarh Through, S. H. O. Police Station Arang, District Raipur
Chhattisgarh

---- Respondent

For Applicant	:	Mrs. Indira Tripathi, Advocate
For Respondent/State	:	Mr. Manish Nigam, Panel Lawyer

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.363 of 2015 registered in Police Station- Arang, District -Raipur (C.G.) for the alleged commission of offence under Section 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 thereafter committed rape on the prosecutrix which is minor in age.
3. Learned counsel for the applicant submits that present is a case of clear consent that the prosecutrix had gone along with the applicant and the allegation of committing sexual intercourse is only after solemnization of marriage and thereafter a child was also born, who is presently 11 months of age as stated by the prosecutrix in her 164 Cr.P.C. statement. Therefore, the applicant may be granted bail.

4. On the other hand, learned counsel for the State has opposed the bail application and submits that looking to the age of prosecutrix, consent is immaterial and if the applicant is released, it will adversely affect the progress of trial.
5. Taking into consideration the totality of the circumstances, the statement of the prosecutrix recorded under Section 164 Cr.P.C. and that the allegation of commission of sexual intercourse is only after solemnization of marriage and further taking into consideration the provision contained in exception 2 of Section 375 IPC and the statement in that regard made by learned counsel for the applicant that it will not amount to rape, 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