

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6880 of 2016

Kundan Lal Yadav S/o Jamuna Prasad Yadav Aged About 30 Years R/o Kailash Nagar, Ward No. 18, Beergaon, Post Office & Police Station Urla, Raipur, District Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station- Urla, District Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Shivendu Pandya, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. Govt. Advocate

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. 124 of 2016 registered in Police Station- Urla, District- Raipur(C.G.) for the alleged commission of offence under Sections 363, 366, 376 IPC and Sections 4, 6 & 8 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.
3. Learned counsel for the applicant submits that even according to the statement of the prosecutrix under Section 164 Cr.P.C., the sexual intercourse occurred between the parties only after solemnization of marriage and as the prosecutrix is approximately 17 years of age, in view of exception -2 to Section 375 IPC, prima facie, offence under Section 376 IPC is not made out. He submits that as the investigation is complete, charge sheet has been filed, the applicant may be granted bail as he is not likely to abscond or tamper with the prosecution witnesses.

4. On the other hand, learned counsel for the State has opposed the bail application. He submits that looking to the age of the prosecutrix, the consent, if any, is immaterial and the application is, therefore, liable to be rejected.
5. Taking into consideration the submissions made by learned counsel for the parties, taking into consideration the totality of the circumstances, particularly taking into consideration the prosecutrix's statement under Section 164 Cr.P.C. and that the allegation of sexual intercourse is only after performance of marriage and the prosecutrix being approximately 17 years of age and also taking into consideration the submission based on exception-2 to 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.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