

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6850 of 2016

Mukesh Kumar S/o Radhelal Kashyap Aged About 24 Years R/o Keshla, Police Station Palmgarh, District Janjgir - Champa Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Kasdol, District Baloda Bazar Bhatapara Chhattisgarh

---- Respondent

Shri B.D.Guru, counsel for the applicant/s.

Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/11/2016

Heard.

The applicant has been arrested on 22/09/2016 in connection with Crime No.52/2016 registered at Police Station- Kasdol, District - Baloda Bazar, Bhatapara (CG) for alleged commission of offences under Section 363, 366, 368 and 376 of IPC and Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant kidnapped the prosecutrix, minor in age and thereafter, committed rape on her.

3. Learned counsel for the applicant submits that even according to the prosecutrix, the prosecutrix is more than 17 years and the allegations of applicant and prosecutrix living together as husband and wife and the prosecutrix conceiving a child, is after solemnization of marriage. Therefore, in view of Exception 2 of Section 375 of IPC, offence under Section 376 IPC is not made out.

4. On the other hand, learned State counsel submits that looking to the age of the prosecutrix, consent is not material and therefore, offence under Section 376 IPC is *prima facie* made out. He further submits that so far, charge sheet has not

been filed.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix under Section 161 and 164 CrPC and further taking into consideration the allegations of applicant and the prosecutrix living together and the prosecutrix becoming pregnant is only after solemnization of marriage between the parties and also considering that the prosecutrix is 17 years of age and in view of Exception 2 of Section 375 of IPC, I am inclined to grant bail to the applicant.

6. Accordingly, the application is allowed. 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 Trial Court. He shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.

Certified copy as per rules.

Sd/-

(Manindra Mohan Shrivastava)
Judge