

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6978 of 2016

Bhanu Prasad Sahu S/o Ramesh Kumar Sahu Aged About 27 Years R/o Village Nardha,
Police Station Gidhori, District Baloda Bazar, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Newra, District Raipur, Chhattisgarh.
(Wrong Mentioned District Baloda Bazar).

---- Respondent

Shri Rakesh Kumar Shukla, counsel for the applicant/s.
Shri R.K.Gupta, Dy.A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/11/2016

Heard.

The applicant has been arrested on 26/08/2016 in connection with Crime No.194/2015 registered at Police Station- Nevra, District - Raipur (CG) for alleged commission of offences under Section 363, 366 and 376 (2) (I) of IPC and Section 4 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 commission of offence under Section 376 IPC is not made out because even according to the prosecutrix, in the statement recorded under Section 164 CrPC before the Magistrate, at the time when the prosecutrix had gone along with the applicant, she had already completed 15 years of age and allegation of sexual intercourse is only after solemnization of marriage between the parties. Therefore, in view of Exception 2 of Section 375 of IPC, offence under Section 376 IPC is not made out. He further submits that investigation is complete, charge sheet has been filed and there is no likelihood of his abscond or tamper with the prosecution witnesses. Therefore, the applicant may be granted bail.

4. On the other hand, learned State counsel opposes prayer and submits that as the prosecutrix was minor, consent is immaterial. Therefore, offence under Section 376 IPC is *prima facie* made out.

5. Taking into consideration the submission of learned counsel for the parties and that investigation is complete, charge sheet has been filed and further taking into consideration the submission of learned counsel for the applicant on the aspect that the prosecutrix was more than 15 years of age and the allegations of sexual intercourse is only after solemnization of marriage between the parties and in view of provisions contained in 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