

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.7138 of 2016**

- Rohit S/o Kunjeram Sahu Aged About 20 Years R/o Village Khairi, Police Station Chhuikhadan, District Rajnandgaon, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Chhuikhadan, District Rajnandgaon, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Abhishek Sharma, Advocate
For Respondent/State	:	Shri D. R. Minz, Dy.GA

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****15/11/2016**

Heard.

2. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.231/2016 registered at Police Station Chhuikhadan, District Rajnandgaon for the offence punishable under Section 363, 366, 376 of IPC and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012. The applicant has been arrested on 22-09-2016.

3. Case of the prosecution is that the applicant kidnapped the prosecutrix and thereafter, it is alleged that rape was committed on her. According to the prosecution, the prosecutrix is minor being less than 18 years.

4. Learned counsel for applicant submits that the prosecutrix, in her statement recorded under Section 164 Cr.P.C., has clearly stated that she had an affair with the applicant and both of them had gone together voluntarily and thereafter, they performed marriage in the Temple at Dongargarh and the

allegation of sexual intercourse is after solemnization of marriage, therefore, in view of the provision contained in exception 2 of Section 375 of IPC, no case for commission of offence under Section 376 IPC is made out. It is further submitted that the investigation is complete, charge sheet has been filed and the offence under Section 363 of IPC is bailable in nature and there is no material to make out prima facie case under Section 366 of IPC and further that looking to the maximum punishment which could be awarded under Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012, the applicant is entitled to bail.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that on the date of commission of offence, the prosecutrix was aged 17 years and 4 months as per the school records and therefore, prima facie case is made out under Section 363, 366 & 376 of IPC and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012, out of which, offence under Section 376 of IPC and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 are grievous in nature and therefore non-bailable.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix recorded under Section 164 of Cr.P.C. and according to prosecution, the prosecutrix was aged more than 17 years and further that the allegation of sexual intercourse with the prosecutrix is only after the performance of marriage and further taking into consideration the provision contained in exception (2) of Section 375 of IPC, the application is allowed.

7. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.20,000/- along with one local surety of 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.

SD/-

(**Manindra Mohan Shrivastava**)

J U D G E