

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7217 of 2016

Manoj Dhruv @ Golu S/o Om Prakash Dhruv Aged About 24 Years (Wrongly Mentioned In The Cause Title In Impugned Order Onkar Dhruv), R/o Chhattisgarh, Behind H.P. Godam, Munna Patels House Police Station Tikrapara, District Raipur, Chhattisgarh.

---- Applicant

Versus

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

---- Respondent

Shri Pawan Kesharwani, counsel for the applicant/s.
Shri Manish Nigam, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/11/2016

Heard.

The applicant has been arrested in connection with Crime No.68/2015 registered at Police Station- Tikrapara, District - Raipur (CG) for alleged commission of offences under Section 363, 366 and 376 of IPC and Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant kidnapped the prosecutrix, and thereafter, committed rape on her, who is less than 18 years of age.

3. Learned counsel for the applicant submits that the prosecutrix and all other important witnesses have been examined during trial. It is submitted that the statement of the prosecutrix clearly shows that she was having affair with the applicant, both of them got married and the allegation of sexual intercourse is only after marriage between the parties. It is further submitted that as the prosecutrix was more than 15 years of age on the alleged date of commission of offence, in view of Exception 2 of Section 375 of IPC, offence under Section 376 IPC is not *prima facie* made out. He further submits that at this stage, looking to

the statement of various witnesses, the applicant may be granted bail as the investigation is complete, charge sheet has been filed and there is no likelihood of his absconding or tampering with the prosecution witnesses.

4. On the other hand, learned State counsel opposes prayer and submits that in view of the record of the school regarding date of birth proved by the prosecution before the Court below, the prosecutrix was less than 18 years of age. Therefore, offence under Section 376 IPC is *prima facie* made out.

5. Taking into consideration the totality of the circumstances and considering that most material witnesses and many other prosecution witnesses have already been examined and the submission that according to the prosecutrix herself, it is a clear case of consent and the allegation of sexual intercourse is only after solemnization of marriage between the parties and that on the date of commission of offence, the prosecutrix was more than 15 years of age, 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