

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7465 of 2016

Harendra S/o Hemulal Kosariya Aged About 22 Years Caste- Satnami, R/o Village Saradih, Police Station & Tahsil Mahasamund, District Mahasamund, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Mahasamund, District Mahasamund, Chhattisgarh.

---- Respondent

Shri V.K.Pandey, counsel for the applicant/s.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

21/11/2016

Heard.

The applicant has been arrested in connection with Crime No.358/2016 registered at Police Station- Mahasamund, District - Mahasamund (CG) for alleged commission of offences under Section 363, 366 and 376 of IPC R/w Section 4 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant kidnapped and raped the prosecutrix, who is stated to be minor in age.

3. Learned counsel for the applicant submits that the prosecutrix and other important witnesses have already been examined by the Trial Court and have not supported the case of the prosecution. According to learned counsel for the applicant, the prosecutrix herself has clearly stated that she had an affair with the applicant, both of them got married and the allegation of sexual intercourse is only after marriage between the parties. Therefore, in view of Exception 2 of Section 375 of IPC, offence under Section 376 IPC is not *prima facie* made out.

4. On the other hand, learned State counsel opposes prayer and submits that as the prosecutrix was minor, consent is immaterial.

5. Taking into consideration the submission of learned counsel for the parties, age of the prosecutrix on the date she states to have voluntarily proceeded along with the applicant and allegation of sexual intercourse is only after performance of marriage between the parties and statement advanced by the applicant by relying upon provisions contained in Exception 2 of Section 375 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