

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7621 of 2016

Khemchand Yadav S/o Kunwar Singh Yadav Aged About 19 Years R/o Village - Mohbhattha, Police Station - Bhatapara (Gramin), District - Balodabazar - Bhatapara Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through : Station House Officer, Police Station - Bhatapara (Gramin), District - Balodabazar - Bhatapara Chhattisgarh

---- Respondent

For Applicant	:	Shri A.S. Rajput, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

29/11/2016

Heard.

1. The applicant has been arrested in connection with Crime No. 297 of 2015 registered in Police Station- Bhatapara (Gramin), District- Balodabazar- Bhatapara (C.G.) for the alleged commission of offence under Sections 363, 366-A and 376 IPC, Section 4 & 18 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution in brief is that the applicant kidnapped the minor and committed rape on the prosecutrix.
3. Learned counsel for the applicant submits that in the statement of the prosecutrix given under Section 164 Cr.P.C., she has clearly stated that she herself went along with the applicant. Both of them married and thereafter have started living as husband and wife. It is submitted that the age of the prosecutrix was more than 15 years on the date marriage was performed. Therefore, in view of provisions contained in exception -2 of Section 375 IPC, it would not be a case of rape.

4. On the other hand, learned counsel for the State has opposed the bail application. He submits that looking to the age of the prosecutrix, prima facie, a case against the applicant is made out.
5. Taking into consideration the submissions made by learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix recorded under Section 164 Cr.P.C., wherein she has stated regarding her affair with the applicant and solemnization of marriage and that age of the prosecutrix is more than 15 years and further taking into consideration the submission made by learned counsel for the applicant that in such a case, by application of exception-2 of Section 375 IPC, it would not be a case of commission of offence under Section 376 IPC and further considering that the investigation is complete and that in the present case, further custodial interrogation does not appear to be necessary, the application is allowed.
6. 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 concerned trial Court with following further conditions:
 - (i) The applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
 - (ii) The applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge