

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7902 of 2016

Nitesh Aamrawanshi S/o Shyamlal Aamrawanshi Aged About 19 Years
Caste Katiya, R/o Village Momari, House No. 111, Post Office & Police
Station- Junnardev, District Chindwara, Madhya Pradesh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station
Piperchedi, District Gariyaband, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Shivendu Pandya, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. G.A.

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

Order On Board

15/12/2016

Heard.

The applicant has been arrested in connection with Crime No.4 of 2016 registered in Police Station- Piperchedi, District -Gariyaband (C.G.) for the alleged commission of offence under Sections 363, 366 & 376/376(2) of IPC and Section 4/6 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant kidnapped and committed rape on the prosecutrix.

3. Learned counsel for the applicant submits that the case of commission of offence under Section 376 of IPC is not made out because the prosecutrix in her statement under Section 164 Cr.P.C. has clearly stated that she married the applicant and the allegation of sexual intercourse is only

after solemnization of marriage, which would not be a case of commission of offence of rape in view of provision contained in exception 2 of Section 375 IPC.

4. On the other hand, learned counsel for the State has opposed the bail application and submits that looking to the age of the prosecutrix, consent is not immaterial.

5. Considering the submissions of learned counsel for the parties, particularly taking into consideration the submission of learned counsel for the applicant that the allegation of commission of sexual intercourse by the applicant with the prosecutrix is only after solemnization of marriage and the prosecutrix being more than 17 years of age and submission based on provision contained in exception 2 of Section 375 IPC, 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