

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7958 of 2016

Amardas Tandan @ Gopi S/o Heeraram Tandan Aged About 20 Years R/o Village Akolikhurd, Post Office & Police Station Arang, District Raipur, Chhattisgarh.

---- Applicant

Versus

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

---- Respondent

Shri Shivendu Pandya, counsel for the applicant/s.
Shri Manish Nigam, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/12/2016

Heard.

The applicant has been arrested in connection with Crime No.08/2016 registered at Police Station – Arang, District - Raipur (CG) for alleged commission of offences under Section 363, 366, 376 of IPC and Section 4/6 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”).

2. Case of the prosecution is that the applicant kidnapped the prosecutrix and thereafter, committed rape on her who is minor in age being less than 16 years at the time of alleged commission of offence.

3. Learned counsel for the applicant submits that the prosecutrix has been examined in the Court and she has not supported the case of the prosecution and has clearly stated her affair with the applicant, both of them left home and married in Arya Samaj Temple and started living as husband and wife. He submits that according to the prosecutrix, she married with the applicant at an age of about 15½ yrs. Therefore, in these circumstances, even if it is alleged that there was sexual intercourse between the applicant and the prosecutrix, case of rape would not be made out in view of Exception 2 of Section 375 of IPC.

4. On the other hand, learned State counsel opposes bail application and submits that looking to the age of the prosecutrix, *prima facie* case is made out because the prosecutrix has clearly stated that she was subjected to rape.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the submission that the prosecutrix have already been examined in the Court where she had stated that she had an affair with the applicant and both of them married in the Arya Samaj Temple and then only, started living as husband and wife and that the prosecutrix was aged between 15 to 16 yrs when she married and started living with the applicant as husband and wife and in view of provisions contained in Exception 2 of Section 375 of 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