

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 8183 of 2016

Lakhan Mahant S/o Shri Narayan Mahant, Aged About 34 Years R/o Store Para,
Puraina Bhilai, Tahsil & District Durg, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station G.R.P. Bhilai, District Durg,
Chhattisgarh.

---- Respondent

For Applicant	:	Shri Jitendra Gupta, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer

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

Order On Board

19/12/2016

Heard.

1. The applicant has been arrested in connection with Crime No. 100 of 2016 registered in Police Station- G.R.P. Bhilai, District- Durg (C.G.) for the alleged commission of offence under Sections 363, 366-A, 376, 506-II IPC and Sections 9 & 10 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant kidnapped and thereafter committed rape on the prosecutrix, who was minor in age at the time of alleged commission of offence. It is also alleged that the applicant was a married person. He suppressed this fact and on a false pretext of marriage, committed rape on the prosecutrix.
3. Learned counsel for the applicant submits that even according to statement of the prosecutrix recorded under Section 164 Cr.P.C., sexual intercourse, if any, was committed only after 1st May, 2016 and according to prosecution, the date of birth of the prosecutrix is 1.5.1998. That means the prosecutrix had already

attained the age of 18 years when she and the applicant entered into physical relation. It is next submitted that in these circumstances, it cannot be said that any offence under Section 376 IPC is made out. It is lastly submitted that the investigation is complete and charge sheet has been filed, therefore, the applicant may be granted bail as he is not likely to abscond or tamper with prosecution witnesses.

4. On the other hand, learned counsel for the State has opposed the bail application. He submits that the applicant being a married person gave a false pretext to obtain consent for sexual intercourse, therefore, it would prima facie amount to commission of offence of rape within the meaning of Section 375 IPC punishable under Section 376 IPC.
5. From the statement of the prosecutrix given under Section 164 Cr.P.C., prima facie, it is reflected that she and the applicant had an affair and the allegation of sexual intercourse is said to have been committed while the prosecutrix was living with the applicant in a house at Charouda. Therefore, considering the aforesaid aspect of the matter and further that the investigation is complete and charge sheet has been filed and there is no material to show that in the event of grant of bail, the applicant is likely to abscond or tamper with the prosecution witnesses, 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