

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.8191 of 2016

- Ishwar Sonwan @ Pintu Sonwan S/o Chandrika Prasad Sonwan Aged About 22 Years R/o Village Kandra Para, Akhra Patan, Police Station & Tahsil Patan District Durg Chhattisgarh

---- **Petitioner**

Versus

- State Of Chhattisgarh Through : - District Magistrate Durg District Durg Chhattisgarh

---- **Respondent**

For Petitioner	:	Shri Arvind Dubey, Advocate
For Respondent/State	:	Shri D. R. Minz, Dy.GA

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

Order On Board

19/12/2016

Heard.

2. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.121/2016 registered at Police Station Aarkshi Kendra Patan, District Durg for the offence punishable under Section 376 of IPC and Section 5 (अ), 11, 5(ब)/6) of the Protection of Children from Sexual Offences Act, 2012. The applicant has been arrested on 23-08-2016.

3. Case of the prosecution is that the applicant kidnapped and thereafter, committed rape on the prosecutrix.

4. Learned counsel for applicant submits that according to ossification test, the age of the prosecutrix is between 18 to 19 years and further that as far as age of the prosecutrix is concerned, there is serious doubt whether she is minor or not. It is next submitted that as per the statement of the prosecutrix recorded under Section 164 Cr.P.C. before the Magistrate, the applicant and the prosecutrix were in affair and the dispute arose only when out of their relations,

prosecutrix conceived but delivered a dead baby and the applicant refused to keep the prosecutrix along with him.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that according to prosecution, the age of the prosecutrix is between 16 ½ year to 17 year, at the time of alleged commission of offence. It is further submitted that as far as ossification test is concerned, it is merely an estimation and according to material so collected, at this stage, prima facie, the age of the prosecutrix is less than 18 years.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the statement of prosecutrix recorded under Section 164 Cr.P.C. as also the opinion of doctor with regard to age of the prosecutrix and the material available on record, the application is allowed.

7. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.20,000/- along with one local surety of 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.

Sd/-

(**Manindra Mohan Shrivastava**)

J U D G E