

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 5924 of 2016

Dinesh Painkra S/o Govind Ram Painkra Aged About 22 Years R/o Village Puhputra, Police Station Lakhanpur, District Surguja Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Lakhanpur, District Surguja Chhattisgarh.

---- Respondent

For Applicant	:	Shri Rahul Mishra, Advocate
For Respondent/State	:	Shri B. Gop Kumar, Dy.A.G.

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

Order On Board

17/10/2016

Heard.

1. The applicant has been arrested in connection with Crime No. 76 of 2016 registered in Police Station- Lakhanpur, District- Surguja, for the alleged commission of offence under Sections 363, 366 and 376 (2) (ढ), 376 (ड) IPC and Sections 5 ढ /6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant, giving false promise of marriage, maintained physical relation with the prosecutrix and thereby committed rape on her. According to the prosecution, as the prosecutrix was less than 18 years of age, the applicant has committed offences as stated herein-above.
3. Learned counsel for the applicant submits that even according to the prosecutrix, it is clearly a case of consent. He submits that even according to

statement under Section 161 Cr.P.C. given by the prosecutrix, she was consenting party and she has stated her age to be 20 years. It is next submitted that in the MLC also, prima facie examination by the doctor reveals prosecutrix's age as 20 years. It is next submitted that even according to the story of the prosecution, the first sexual intercourse occurred in the month of February, 2015. Even taking into consideration the date of birth as stated by the prosecutrix i.e. 15.2.1997, the prosecutrix was 18 years of age. The FIR was lodged on 1.6.2016 in which also the age of the prosecutrix has been recorded as 20 years. It is submitted that it is the case of delayed FIR. Investigation is complete, charge sheet has been filed and the applicant is not likely to abscond. Therefore, he may be granted bail.

4. On the other hand, learned counsel for the State has opposed the bail application and submitted that as the prosecutrix has clearly stated that the applicant committed sexual intercourse on the false pretext of marriage, which amounts to rape. The prosecutrix was less than 18 years of age as per the date of birth collected by the prosecution. Therefore, a case is made out against the applicant.
5. Taking into consideration the submissions made by learned counsel for the parties, particularly taking into consideration that the allegation of sexual intercourse is said to have been first committed sometime in the month of February, 2015 and the possibility of the prosecutrix being more than 18 years cannot be ruled out at this stage and also taking into consideration the statement under Section 164 Cr.P.C. of the prosecutrix in which she has not made any allegation of sexual intercourse by the applicant and that FIR has been lodged as late as on 1.6.2016 and in various documents like FIR, statement under Section 161 Cr.P.C., the age of the prosecutrix is indicated to be approximately 20 years, 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) that he shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and

- (ii) that he 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

Praveen