

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6472 of 2016

- Nakul Nishad S/o Purushottam Nioshad Aged About 23 Years R/o Dhaneli, Thana Dharsinva, District Raipur, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through S.H.O., Police Station Dharsinva, Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Vikram Singh, Advocate
For Respondent/State	:	Mr. D.R. Minj, Dy. Government Advocate

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

Order On Board

18/10/2016

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.28/2016 registered at Police Station Dharsinva District Raipur for the offence punishable under Sections 363, 366, 376 of the IPC and Sections 4 & 7 of the Protection of Children from Sexual Offences Act, 2012. The applicant has been arrested on 17-07-2016.
3. Case of the prosecution is that the applicant after kidnapping the prosecutrix taken her into another station and there he had committed rape.
4. Learned counsel for the applicant submits that the statement of the prosecutrix under Section 164 of the Cr.P.C. clearly shows that it was at the initiation of the prosecutrix that the applicant and the prosecutrix left from the place of their residence together as there was a love affair between them. Thereafter, the prosecutrix has stated that after performing marriage, they started living together as husband and wife. Commission of rape is subsequent to performance of marriage, therefore, outside the purview the offence of rape as stated under Section 375 of the IPC.
5. Per contra, learned State counsel opposes the prayer for grant of bail,

and submits that looking to the age of the prosecutrix being 16 years and 5 months, consent is not made out. It is further submitted that in the statement under Section 161 of the Cr.P.C., the prosecutrix has stated that the applicant on false pretext of marriage has committed sexual intercourse. As far as commission of offence under various provisions as made out in charge-sheet is concerned, *prima-facie* case is made out against the applicant.

6. I have perused the case diary and the statement of the prosecutrix.
7. Taking into consideration the submission of learned counsel for the parties and further that the statement of prosecutrix under Section 164 of the Cr.P.C. and also that the allegation of sexual harassment is subsequent to performance of marriage between the parties and the fact that the investigation is complete and the charge-sheet has already been filed, I am inclined to release the applicant on bail.
8. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is allowed. It is directed that the applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the concerned trial Court, for his appearance as and when directed.

Sd/-
(Manindra Mohan Shrivastava)
J U D G E