

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6837 of 2016

Karan Dewar S/o Sherkhan Dewar, Aged About 26 Years R/o Village Laxmanpur,
Bhatapara, Police Station Chhuikhadan, District Rajnandgaon, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Police Station Chhuikhadan, Rajnandgaon,
Chhattisgarh.

---- Respondent

Shri S.S.Baghel, counsel for the applicant/s.
Shri Manish Nigam, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/11/2016

Heard.

The applicant has been arrested on 18/07/2016 in connection with Crime No.89/2016 registered at Police Station – Chhuikhadan, District – Rajnandgaon (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.

2. Case of the prosecution is that the applicant kidnapped and committed rape on the prosecutrix.

3. Learned counsel for the applicant submits that the applicant and the prosecutrix were in affair and thereafter, they solemnized marriage and all the allegations of sexual intercourse is only after marriage between the applicant and the prosecutrix. Therefore, in view of exception 2 under Section 375 of IPC, offence under Section 376 IPC is not made out. He further submits that investigation is complete, charge sheet has been filed and the applicant is not likely to abscond or tamper with the prosecution witness. Therefore, he may be granted bail.

4. On the other hand, learned State counsel submits that looking to the age of the prosecutrix, consent is not material and therefore, offence under Section 376 IPC is *prima facie* made out.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix under Section 164 CrPC and submission of learned counsel for the applicant that the allegation of sexual intercourse with the prosecutrix by the applicant is alleged to have committed after solemnization of marriage between them and also considering that the prosecutrix is more than 16 years of age, 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