

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6256 of 2016

Devisharan Ayam S/o Ramdhani Gond Aged About 20 Years R/o Village- Pandari,
Police Station- Raghunathnagar, District- Balrampur- Ramanujganj, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station- Basantpur Ambikapur, District-
Balrampur- Ramanujganj, Chhattisgarh.

---- Respondent

Shri Vikas Pandey, counsel for the applicant/s.
Shri D.R. Minj, Dy.G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/11/2016

Heard.

The applicant has been arrested on 10/07/2016 in connection with Crime No.82/2016 registered at Police Station – Basantpur, District – Ambikapur (CG) for alleged commission of offences under Section 363, 366, 376, 342, 506-B R/w 34 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant kidnapped the prosecutrix, she was taken to the house of his relative and committed rape on her. On a report made by the prosecutrix on 09/07/2016, offences have been registered against the applicant.

3. Learned counsel for the applicant submits that the FIR, statement under Section 161 and 164 CrPC of the prosecutrix makes out a case of consent between the applicant and the prosecutrix because even according to the prosecutrix, she herself had gone along with the applicant and resided in the house of the relative of the applicant. It is next submitted that according to the documents collected during investigation, age of the prosecutrix has been shown to be 17 – 18 years and according to the Radiological report, her age is shown to be between 17 – 19 years. He 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, the applicant may be granted bail.

4. On the other hand, learned State counsel submits that as per the school certificate, the date of birth of the prosecutrix is 09/09/1998 and the Radiologist has also given an opinion that the age of the prosecutrix appears to be below 18 years. Therefore, consent is not material at this stage. The prosecution has clearly stated regarding prosecutrix having been subjected to sexual assault by the applicant. Therefore, *prima facie* case is made out.

5. *Prima facie*, the documents collected by the prosecution during investigation show that according to the school certificate, the age of the prosecutrix is 17 to 18 years and Adhaar Card shows her age more than 18 years. Radiological report also indicates that the age of the prosecutrix could be anywhere between 17 to 19 years on the basis of stage of fusion of bones.

FIR, statement under 161 and 164 CrPC of the prosecutrix shows that she had gone along with the applicant and thereafter, she stayed in the house of the relatives of the applicant for sometime in the month of February, 2016. The report has been lodged in the police station after 5 months when an attempt was made by the applicant to take the prosecutrix along with him. This, if also seen along with the statement under Section 161 CrPC of the prosecutrix that there was an effort to solemnize marriage between the applicant and the prosecutrix, therefore, taking into consideration the totality of circumstances and that the investigation is complete, charge sheet has been filed, 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