

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6640 of 2016

Vinod Mathur S/o Shri Raj Kumar Mathur Aged About 23 Years R/o Village Phulwarikala, Police Station Lalpur, Tahsil Lormi, District Mungeli, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Lormi, District Mungeli, Chhattisgarh.

---- Respondent

Shri Dheerendra Pandey, 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 18/07/2015 in connection with Crime No.232/2015 registered at Police Station – Lormi, District – Mungeli (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 statement of the prosecutrix recorded under Section 164 CrPC clearly shows that it was on the instance of the prosecutrix that the applicant and the prosecutrix left the place and they performed marriage. The allegation of having committed sexual intercourse is only after solemnization of marriage. Therefore, it cannot be said to be a case of offence under Section 376 IPC in view of exception 2 under Section 375 of IPC. It is also submitted that the certificate of age of the prosecutrix which has been collected by the prosecution is *prima facie* fake because it is said to have been issued on the basis of the entry made in relation to District – Mungeli at the time,

when it actually did not come into existence.

4. On the other hand, learned State counsel submits that as *prima facie* material with regard to the age of the prosecutrix is less than 18 years as on the date of alleged commission of offence, consent is not material.

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 allegations of sexual intercourse is said to have been committed after solemnization of marriage between the applicant and the prosecutrix and also taking into consideration the provisions contained in exception 2 of Section 375 of IPC, 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