

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 6853 of 2016

Mohan Nishad S/o Late Chamar Nishad Aged About 22 Years R/o - Village -
Limgaon, Police Station & Tahsil - Sarangarh, District Raigarh Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through S. H. O. Of The Police Station - Pussour, District
Raigarh Chhattisgarh

---- Respondent

Shri Abhishek Saraf, counsel for the applicant/s.
Shri Chandresh Shrivastava, 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 31/05/2016 in connection with Crime No.240/2015 registered at Police Station – Pussour, District – Raigarh (CG) for alleged commission of offences under Section 376 of IPC and Section 3 and 4 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, who is a minor girl.

3. Learned counsel for the applicant submits that the prosecutrix has not supported the allegation of rape committed on her and she has clearly stated in her statement before the Court that she had affair with the applicant, she left her house and performed marriage with the applicant and then went to Jammu and started living there as husband and wife and then she became pregnant. Therefore, in view of Exception 2 of Section 375 of IPC, offence under Section 376 IPC is not made out.

4. On the other hand, learned State counsel submits that the prosecutrix is

alleged to have been kidnapped on 22/09/2015 and at that time, she was less than 15 years of age. Therefore, *prima facie* case is made out.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the submission that even according to the statement of the prosecutrix recorded in the Court, she had performed marriage with the applicant and thereafter, went to Jammu where they started living like husband and wife and that the prosecutrix had completed 15 years of age on 14/06/2015 and in view of provisions contained in Exception 2 of Section 375 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