

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 364 of 2017

Chandrashekhar Patel S/o Shri Ishwar Patel Aged About 27 Years R/o Gram Mujgahan, Abadi Para, Police Station Arjuni, District Dhamtari, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Police Station, City Kotwali Dhamtari, Chhattisgarh

---- Respondent

For Applicant	:	Shri Anjinesh Shukla, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. G.A.

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

Order On Board

06/02/2017

Heard.

The applicant has been arrested in connection with Crime No.416 of 2016 registered in Police Station-City Kotwali, District -Dhamtari (C.G.) for the alleged commission of offence under Sections 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, stated to be less than 18 years of age.

3. Learned counsel for the applicant submits that while the prosecutrix, according to the applicant, is a major being more than 18 years of age. Her statement recorded under Section 164 Cr.P.C. clearly shows that she had an affair with the applicant and thereafter, they got married and the allegation of sexual intercourse is only after solemnization of marriage. Therefore, by virtue of exception 2 of Section 375 of IPC, it would not be a case of

commission of offence of rape. He further submits that the investigation is complete, charge sheet has been filed and there is no material to show that the applicant is likely to abscond or tamper with the prosecution witnesses, therefore, he may be granted bail.

4. On the other hand, learned counsel for the State has opposed the bail application and submits that looking to the nature and gravity of allegation and that the prosecutrix is less than 18 years of age, prima facie case is made out.

5. Considering the submissions of learned counsel for the parties, particularly taking into consideration the submission that in the statement recorded under Section 164 Cr.P.C., the prosecutrix has stated having solemnized marriage with the applicant and the allegation of sexual intercourse is only after solemnization of marriage and further that at that time the age of the prosecutrix was less 16 ½ years and provision contained in exception 2 of Section 375 IPC and that the investigation is complete, charge sheet has been filed and there is no material to show that the applicant is likely to abscond or tamper with the prosecution witnesses, the application is allowed.

6. 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 concerned trial Court with following further conditions:

- (i) The applicant shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (ii) The applicant shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge