

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1353 of 2017

Pawan Sahu S/o Gajju Sahu Aged About 30 Years R/o Tehka, Police Station- Bhatapara (Gramin), Civil And Revenue District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through: Station House Officer, Police Station- Bhatapara (Gramin), Civil And Revenue District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Respondent

For Applicant	:	Shri A.P. Sharma, Advocate
For Respondent/State	:	Shri Satish Gupta, Govt. Advocate

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

Order On Board

06/03/2017

Heard.

1. The applicant has been arrested in connection with Crime No.326 of 2014 registered in Police Station- Bhatapara (Gramin), District -Baloda Bazar- Bhatapara (C.G.) for alleged commission of offence under Sections 363, 366-A and 376 IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant kidnapped the prosecutrix and it is alleged that thereafter, he committed rape on her. The prosecutrix stated to be less than 18 years of age when the applicant committed sexual intercourse.
3. Learned counsel for the applicant submits that the prosecutrix's statement under Section 164 Cr.P.C. does not disclose commission of offence under Section 376 IPC against the applicant. He submits that according to prosecutrix, she and the applicant were in affair. Though they had gone to other place, there

is no allegation of she having been subjected to sexual intercourse and her statement only indicates that the applicant and the prosecutrix married and thereafter only child was born in the month of October, 2016 which indicates that the sexual intercourse, in all probability, was done only after solemnization of marriage and not before that. Therefore, in these circumstances, offence under Section 376 IPC would not be made out in view of exception-2 to Section 375 IPC because the prosecutrix was more than 17 years of age at that point of time.

4. On the other hand, learned counsel for the State has opposed the bail application. He submits that the consent of the prosecutrix is inconsequential as she was less than 18 years of age at the time of sexual intercourse, therefore, a prima facie case is made out against the applicant.
5. Having considered the submissions made by learned counsel for the parties, particularly taking into consideration that the prosecutrix in her statement under Section 164 Cr.P.C. has stated regarding solemnization of marriage and given birth to a child only after solemnization of marriage and further taking into consideration the submission that the prosecutrix, at that time, was more than 17 years of age and the provision contained in exception-2 to Section 375 IPC, I am inclined to enlarge the applicant on bail.
6. The application is accordingly 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 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