

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 8485 of 2016

Happi Singh S/o Shri Balbir Singh Aged About 25 Years R/o Subhash Chowk, Camp No.01, Bhilai, Tahsil And District Durg, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through : Station House Officer, Police Station Chhawani, District Durg, Chhattisgarh.

---- Respondent

Shri Goutam Khetrapal, counsel for the applicant/s.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/01/2017

Heard.

The applicant has been arrested in connection with Crime No.531/2015 registered at Police Station – Chhawani, District – Durg (CG) for alleged commission of offences under Section 344, 109, 506, 376, 34 of IPC and Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”).

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 allegations of rape against the applicant is false and fabricated as the prosecutrix examined under Section 164 CrPC before the Magistrate but she has not stated about any such incident of she having been subjected to rape and she has only stated about keeping her in confinement in the house of the applicant where she is alleged to have been maltreated by the applicant. Except this, there are no allegations. He submits that the applicant is in jail since 1 year and 4 months and trial has not been concluded. In these circumstances, the applicant may be granted bail.

4. On the other hand, learned State counsel opposes bail application and submits that in the FIR and statement under Section 161 CrPC of the prosecutrix, there are allegations of rape and in statement under Section 164 CrPC, the prosecutrix has used words '*jore jabardasti*'.

5. In the present case, the applicant has remained in jail since 1 year and 4 months and till date, the prosecutrix has not been examined. According to the statement of the prosecutrix under Section 164 CrPC, the applicant and the prosecutrix are related to each other and it is alleged that the prosecutrix was residing in the house of her aunt and allegations of harassment are alleged to have taken place during the period of her stay in her aunt's house and there is no specific allegation of she having subjected to rape in the statement under Section 164 CrPC.

6. Taking into consideration the totality of circumstances, particularly statement of the prosecutrix and long pre-trial detention of the applicant, I am inclined to grant bail to the applicant.

7. 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