

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.8454 of 2016

- Arun Gupta S/o Ramchandra Gupta Aged About 21 Years R/o Durga Para, Bengali Mohalla, House Of Vishnu Saha, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through S.H.O., Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Pushkar Sinha, Advocate
For Respondent/State	:	Shri B. Gopa Kumar, Dy.AG

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

Order On Board

02/01/2017

Heard.

2. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.620/2015 registered at Police Station Tikrapara, District Raipur for the offence punishable under Section 363, 366, 376 of IPC and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.

3. Case of the prosecution is that the applicant kidnapped and thereafter, committed rape on the prosecutrix.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. It is submitted that the prosecutrix and the applicant were in affair and marriage was also performed and thereafter, parents of the applicant accepted the applicant and the prosecutrix and then, both of them started living as husband and wife in the house of the applicant. It is also submitted that at the time of marriage, the prosecutrix was more than 17

years of age, in view of the provision contained in exception (2) of Section 375 IPC, offence under Section 376 of IPC is not made out.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that at the time of commission of offence, the prosecutrix is 17 & ½ years age, therefore prima facie case is made out against the applicant and consent is immaterial.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix recorded under Section 164 of Cr.P.C. before the Magistrate that she and the applicant were in affair and marriage was also solemnized and the allegation of sexual intercourse is only after the marriage and further taking into consideration the age of the prosecutrix at the time of marriage was approximately 17 & ½ years and the provision contained in exception (2) of Section 375 IPC, the application is allowed.

7. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.20,000/- along with one local surety of 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. It is also made clear that the applicant shall co-operate with the investigation and shall not tamper with the prosecution witnesses.

SD/-

(**Manindra Mohan Shrivastava**)

J U D G E