

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.883 of 2017

- Mukesh Kaushik S/o Shiv Kumar Kaushik Aged About 21 Years R/o Village- Sakarra, Police Station- Hirri, Civil & Revenue District- Bilaspur, Chhattisgarh.

---- **Petitioner**

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station- Hirri, District- Bilaspur, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Kishore Bhaduri, Advocate
For Respondent/State	:	Shri D. R. Minz, Dy.GA

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/02/2017

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.66/2015 registered at Police Station Hirri, District Bilaspur for the offence punishable under Section 376, 312 of IPC and Section 3 & 4 of the Protection of Children from Sexual Offences Act, 2012.

3. Case of the prosecution is that the applicant committed rape on the prosecutrix, who is minor.

4. Learned counsel for the applicant submits that the prosecutrix and other important prosecution witnesses have already been examined in the Court and they have not supported the case of the prosecution. He submits that the prosecutrix in her statement under Section 164 Cr.P.C. has clearly stated that she and the applicant had an affair and in the cross-examination, she has admitted that the sexual intercourse was committed only after solemnization of marriage, therefore, the applicant may be granted bail.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that the medical evidence reveals that the prosecutrix conceived and thereafter, abortion having taken place and the prosecutrix being less than 18 years of age, prima facie is made out against the applicant.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration that the prosecutrix has not supported the case of the prosecution and stated regarding affair and further that the sexual intercourse alleged to have committed after solemnization of marriage between the applicant and the prosecutrix and the prosecutrix stated to be more than 15 years of age and in view of the provision contained in exception (2) of Section 375 IPC and also that the applicant is in jail since 10-11-2016, 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.

SD/-

(Manindra Mohan Shrivastava)

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