

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1391 of 2017

1. Akash Verma S/o Sunil Kumar Verma, Aged About 22 Years R/o Subhash Nagar, Ghosh Para, Police Station Ambikapur, District Surguja, Chhattisgarh.
 2. Amit Verma, S/o Sunil Kumar Verma, Aged About 26 Years R/o Subhash Nagar, Ghosh Para, Police Station Ambikapur, District Surguja, Chhattisgarh.
- Applicants**

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Ambikapur, District Surguja, Chhattisgarh

---- Respondent

For Applicants	:	Shri Jitendra Shrivastava, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, PL

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

Order On Board

06/03/2017

Heard.

The applicants have been arrested in connection with Crime No.703 of 2016 registered in Police Station-Ambikapur, District Surguja (C.G.) for the alleged commission of offence under Sections 363, 366, 366 क, 368, 376, 34, 376 (2) (क) of IPC and Sections 3, 4, 5 क, 6, 17 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that applicant No.1/Akash Verma kidnapped and thereafter committed rape on the prosecutrix, who is stated to be less than 18 years of age. The allegation against the other applicant is that he was the elder brother of applicant No.1 and therefore, he is also involved because he helped the applicant No.1 to remove the girl from the custody of her parents.

3. Learned counsel for the applicant submits that the applicant No.2 -Amit Verma and other co-accused namely the mother and sister, all have been involved in the alleged commission of offence though they have no role to play. He submits that prosecutrix in her statement under Section 164 Cr.P.C. has stated that she and applicant had an affair, they eloped from their house and thereafter performed marriage in the temple. The allegation of sexual intercourse is only after solemnization of marriage. Therefore, in view of provision of exception 2 of Section 375 of IPC, the prosecutrix being approximately 17 years of age at the time of marriage and thereafter sexual intercourse, no case of commission of offence of rape would be made out. He further submits that the other two accused Smt. Geeta Verma and Ku. Pooja Verma have already been granted bail by this Court.

4. On the other hand, learned counsel for the State has opposed the bail application and submits that as the prosecutrix was less than 18 years of age, consent is immaterial and sexual intercourse with her, would prima facie make out a case of commission of offence against the applicants. Therefore, the applicants are not entitled to grant of bail.

5. Taking into consideration the submissions of learned counsel for the parties, particularly taking into consideration the submission based on the prosecutrix statement under Section 164 Cr.P.C. that the prosecutrix and the applicant had an affair, they eloped and thereafter they performed marriage and that the prosecutrix claims to have become pregnant only after solemnization of marriage and further that at the time of solemnization of marriage and thereafter sexual intercourse, she was approximately 17 years of age, according to the medical on record of the case diary, the application is allowed.

6. It is directed that the applicants shall be released on bail on each of them 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 applicants shall not act in any manner which will be prejudicial to fair and expeditious trial; and
- (ii) The applicants shall appear before the trial Court on each and every date given to them by the said Court till disposal of the trial.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha