

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 8308 of 2016

Narendra Dhiwar S/o Mujnool Ram Dhiwar Aged About 18 Years R/o - Mandhar,
Post Office & Police Station - Vidhan Sabha, Raipur, District Raipur
Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station -
Vidhan Sabha District - Raipur Chhattisgarh

---- Respondent

For Applicant	:	Shri Shivendu Pandya, Advocate
For Respondent/State	:	Shri B. Gop Kumar, Dy.A.G.

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

Order On Board

02/01/2017

Heard.

1. The applicant has been arrested in connection with Crime No. 96 of 2016 registered in Police Station- Vidhan Sabha, District-Raipur (C.G.) for the alleged commission of offence under Sections 363, 366 & 376 (2) (n) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant kidnapped and thereafter committed rape on the prosecutrix, who is stated to be minor aged 16-17 years.
3. Learned counsel for the applicant submits that even according to the statement of the prosecutrix recorded under Section 164 Cr.P.C. by the Magistrate, the prosecutrix and the applicant were in affair and thereafter they also performed marriage and the allegation of sexual intercourse is only after marriage and as the prosecutrix, at that time, was more than 15 years of age, in view of exception-2 to Section 375 IPC, offence under Section 376 IPC would not be made out and as there are no allegation of compulsion, even prima facie case

under Section 366 IPC is not made out. The offence under Section 363 being bailable, the applicant may be granted bail.

4. On the other hand, learned counsel for the State has opposed the bail application. He submits that looking to the age of the prosecutrix as she was less than 18 years, love affair or consent are immaterial and as the applicant has committed sexual intercourse, a prima facie case as alleged is made out.
5. Considering the submissions made by learned counsel for the parties, particularly taking into consideration the submission based on the prosecutrix statement recorded under Section 164 Cr.P.C that she and the applicant were in affair and they got married and thereafter started living as husband and wife, during which period there was sexual intercourse and that investigation is complete and charge sheet has been filed, I am inclined to allow the application.
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