

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 28 of 2017

1. Jakir @ Rahul & Anr. S/o Mo. Safi, Aged About 23 Years R/o Village Mardannaka Banda, Police Station Kotwali Banda, District Banda Uttar Pradesh
2. Muskuratun, S/o Jalil Ansari, Aged About 35 Years R/o Village Mainpath, Police Station Kamaleshwarpur, District Surguja Chhattisgarh

---- Applicants

Versus

State Of Chhattisgarh Through Police Station Ambikapur District Surguja Chhattisgarh

---- Respondent

Shri S.D.Singh, counsel for the applicant/s.
Shri D.R.Minj, Dy.G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

23/01/2017

Heard.

The applicants have been arrested in connection with Crime No.02/2015 registered at Police Station – Ambikapur, District - Surguja (CG) for alleged commission of offences under Section 363, 366, 366 (क), 376 (2) (झ - ठ), 34, 323 of IPC and Section 5 ठ, 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant No.1 committed rape on the prosecutrix who is stated to be less than 18 years of age. The allegations against applicant No.2 is that she is the sister-in-law, with whose connivance applicant No.1 committed offence.

3. Learned counsel for the applicants argued that even according to the prosecutrix and other prosecution witnesses who have now been examined by the prosecution during trial, the prosecutrix has not supported the case of the

prosecution that applicant No.1 had kidnapped the prosecutrix. He submits that the prosecutrix and applicant No.1 had an affair and thereafter, they performed marriage according to the rituals of Mohammedan law and the allegation of sexual intercourse is after solemnization of marriage, therefore, in view of provisions contained in Exception 2 of Section 375 of IPC, it cannot be said to be an offence under Section 376 of IPC. In these circumstances, the applicants may be granted bail as the applicants are not likely to abscond or otherwise tamper with the prosecution witnesses.

4. On the other hand, learned State counsel opposes bail application and submits that as the prosecutrix, on the alleged date of incident was less than 18 years, consent is immaterial.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the submission of learned counsel for the applicants that according to Court statement of the prosecutrix, she and the applicant had sexual intercourse when the prosecutrix was more than 17 years of age and further taking into consideration the submission that according to statement of the prosecutrix, the applicant and the prosecutrix performed marriage according to rituals of Mohammedan law and thereafter, started living like husband and wife, I am inclined to grant bail to the applicant.

6. Accordingly, the application is allowed. 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 Trial Court. They 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