

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 122 of 2017

Dravin Kumar Yadav S/o Suresh Kumar Yadav, Aged About 21 Years R/o Village Siloti, House Of Dulari Vishwakarma, Police Station Bhakhara, Civil And Revenue District Dhamtari Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Bhakhara, Civil And Revenue District Dhamtari Chhattisgarh

---- Respondent

Shri Purnendra Khichariya, counsel for the applicant/s.
Shri Manish Nigam, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/01/2017

Heard.

The applicant has been arrested in connection with Crime No.328/2016 registered at Police Station – Bhakhara Distt. - Dhamtari (CG) for alleged commission of offences under Section 363, 376 of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant kidnapped and thereafter, committed rape on the prosecutrix who is stated to be less than 18 years of age.

3. Learned counsel for the applicant submits that even as per statement under Section 164 CrPC of the prosecutrix recorded by the Magistrate, the prosecutrix and the applicant had an affair since long and went to Nagpur and there, marriage was solemnized. Thereafter, they came back but the parent of the prosecutrix did not give shelter in their house. Thereafter, she started living with the applicant as his wife. He submits that in view of provisions contained in Exception 2 of Section 375 of IPC, as the age of the prosecutrix at the time of marriage and thereafter, sexual intercourse was more than 15 years, it cannot be said to be an offence

under Section 376 of IPC.

4. On the other hand, learned State counsel opposes bail application and submits that in view of the age of the prosecutrix, prima facie case is made out, notwithstanding there being marriage between the parties.

5. Considering the submission of learned counsel for the parties, taking into consideration the statement under Section 164 CrPC of the prosecutrix, her age at the time of solemnization of marriage and further that allegations of commission of sexual intercourse is only after solemnization of marriage, charge sheet has been filed and also submission based on provisions contained in Exception 2 of Section 375 IPC, I am inclined to grant bail to the applicant.

6. Accordingly, the application is 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 Trial Court. He 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