

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 249 of 2017

Vikash Jaiswal S/o Ramesh Jaiswal, Aged About 23 Years Caste- Kalar, R/o Pali, Police Station- Pali, Revenue And Civil District- Korba Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through- Police Station- Pali, District- Korba Chhattisgarh.

---- Respondent

For Applicant	:	Shri Sandeep Dubey, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. Govt. Advocate

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

Order On Board

23/01/2017

Heard.

1. The applicant has been arrested in connection with Crime No.190 of 2016 registered in Police Station- Pali, District -Korba (C.G.) for the alleged commission of offence under Section 376 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant committed rape on the prosecutrix stated to be less than 18 years of age.
3. Learned counsel for the applicant submits that even according to prosecutrix's statement recorded under Section 164 Cr.P.C, the applicant and the prosecutrix had an affair and they performed marriage in the temple. Thereafter, they started maintaining relationship as husband and wife and, therefore ,sexual intercourse, if any, committed during that period, would fall outside the purview

of Section 376 IPC as per the provision contained in exception -2 to Section 375 IPC.

4. On the other hand, learned counsel for the State has opposed the bail application. He submits that as the prosecutrix was less than 18 years of age, her consent is immaterial and the sexual intercourse would prima facie make out a case of commission of rape.
5. Having heard the submissions made by learned counsel for the parties, taking into consideration the submission regarding age of the prosecutrix, that the marriage was solemnized between the parties as per the statement of the prosecutrix recorded under Section 164 Cr.P.C. and the allegation of sexual intercourse is only thereafter and that the age of the prosecutrix stated to be more than 15 years and also considering that further custodial interrogation of the applicant does not appear to be necessary, 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