

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.683 of 2017

- Sudesh Kumar Chouhan S/o Shri Puniram Chouhan, Aged About 24 Years R/o Village Katangdih, Police Station & Tahsil Gharghoda, District Raigarh, Chhattisgarh.

---- **Petitioner**

Versus

- State Of Chhattisgarh Through S.H.O. Of The Police Station Pussour, District Raigarh, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Abhishek Saraf, Advocate
For Respondent/State	:	Shri Manish Nigam, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

21/02/2017

Heard.

2. The applicant has moved this application under Section 439 of the Cr.P.C. for grant of regular bail in connection with Crime No.146/2016 registered at Police Station Pussour, District Raigarh for the offence punishable under Section 363, 366, 376 of IPC and Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012.

3. Case of the prosecution is that the applicant kidnapped and thereafter committed rape on the prosecutrix.

4. Learned counsel for the applicant submits that the prosecutrix in her statement under Section 164 Cr.P.C. recorded before the Magistrate has clearly stated that she and the applicant had an affair and then, they performed marriage and started living together as husband and wife, during which period, sexual intercourse was also performed. It is submitted that as the prosecutrix was more than 15 years of age and the allegation of sexual intercourse is only after solemnization of marriage and by virtue of the provision contained in

exception(2) of Section 375 IPC, offence under Section 376 of IPC is not made out and the applicant is in jail since 16-08-2016 and when investigation is complete, charge sheet has been filed and the applicant is not likely to abscond or tamper with the prosecution witnesses, the applicant may be granted bail.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that as the prosecutrix being less than 18 years of age, prima facie case is made out against the applicant.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the submission based on the statement of the prosecutrix, in which, she stated regarding affair with the applicant and eloped from the house and solemnized marriage and then, they started living together as husband and wife and further that the sexual intercourse alleged to have committed after solemnization of marriage between the applicant and the prosecutrix and the prosecutrix stated to be more than 15 years of age and in view of the provision contained in exception (2) of Section 375 IPC and also that the applicant is in jail since 16-08-2016, the application is allowed.

7. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.20,000/- along with one local surety of 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.

Sd/-

(Manindra Mohan Shrivastava)

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