

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.274 of 2017

- Ram Prasad @ Rinku Sahu S/o Shri Phoolchand @ Chanda Sahu Aged About 23 Years R/o Gadhi, Police Station Kotma, District Anuppur, Madhya Pradesh.

---- **Petitioner**

Versus

- State Of Chhattisgarh Through The Police Station, Rakhi, Raipur, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri N. Naha Roy, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/01/2017

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.110/2016 registered at Police Station Rakhi, Raipur, District Raipur for the offence punishable under Section 363, 366, 376 of IPC and Section 7 & 8 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 argued that the prosecutrix and her mother both have been examined and both of them have stated that the age of the prosecutrix at the time of the incident was 18 years. He next submitted that the statement of the prosecutrix clearly shows that she and the applicant were in affair and marriage was also performed and the allegation of sexual intercourse 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. In the absence of there being any element of compulsion of marriage, offence under Section 366 of IPC is also not prima facie made out and the offence under Section 363 of IPC is bailable. It is lastly submitted that offence under Section 7 & 8 of the POCSO Act are also not made out , because the prosecutrix is more than 18 years of age.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that as per school record, date of birth of the prosecutrix is 17-07-2001, which shows that at the time of incident, she was less than 15 years of age, therefore prima facie case is made out against the applicant.

6. The prosecutrix is stated to be less than 15 years of age. However, at this stage, learned counsel for the applicant has drawn attention of this Court to the prosecutrix statement before the Court that the incident was happened 6-7 months before. When the prosecutrix met with the applicant and performed marriage, she was around 15 years of age, according to the evidence of date of birth collected by the prosecution. Therefore, in these circumstances, taking into consideration the submission of learned counsel for the parties, particularly taking into consideration that the prosecutrix and her mother both have been examined and the provision contained in exception (2) of Section 375 IPC, 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. It is also made clear that the applicant shall co-operate with the investigation and shall not tamper with the prosecution witnesses.

SD/-

(**Manindra Mohan Shrivastava**)

J U D G E