

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1041 of 2017

Bheem Dhivar @ Chandrashekhar S/o Late Dasrath Dhivar, Aged About
23 Years R/o Village Sarkhor, Thana- Kasdol, District-Baloda Bazar
Bhatapara, Chhattisgarh **---- Applicant**

Versus

State Of Chhattisgarh Through Thana Simga, District Baloda Bazar,
Chhattisgarh. **---- Respondent**

For Applicant	:	Shri Samir Singh, Advocate
For Respondent/State	:	Shri Manish Nigam, Panel Lawyer

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

Order On Board

03/03/2017

Today, the Station House Officer of Police Station Simga, District Baloda Bazar is present in the Court.

Upon instructions, learned State counsel submits that though the prosecutrix was produced before the Magistrate but statement under Section 164 of Cr.P.C. has not been recorded.

In that view of the matter, no further orders are required to be passed in so far as the direction issued to the concerned SHO is concerned.

His presence is exempted.

Heard.

1. The applicant has been arrested in connection with Crime No.81 of 2016 registered in Police Station- Simga, District Baloda Bazar (C.G.) for the alleged commission of offence under Sections 363, 366, 376 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution is that the applicant kidnapped and committed rape on the prosecutrix, who stated to be 18 years of age.

3. Learned counsel for the applicant submits that present is a case where prosecutrix and applicant had an affair and when the prosecutrix was being compelled to marry with the applicant against her will, they eloped and got married. He further submits that the allegation of sexual intercourse is only after solemnization of marriage. Therefore, by virtue of exception 2 of Section 375 of IPC, it would not be a case of commission of offence of rape.
4. On the other hand, learned counsel for the State has opposed the bail application and submits that consent is not material as prosecutrix is less than 18 years of age and that looking to the nature and gravity of allegation, the applicant is not entitled to grant of bail.
5. Considering the submission of learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix recorded under Section 161 Cr.P.C. that the sexual intercourse between the prosecutrix and the applicant took only after solemnization of marriage and further taking into consideration the provision contained in exception 2 of Section 375 IPC, I am inclined to grant bail to the applicant. Therefore, the application is allowed.
6. 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