

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1362 of 2017

Maheshu Nishad S/o Panchuram Nishad Aged About 28 Years R/o Village Ughra, Thana- Bemetara, District Bemetara, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Thana- Supela, District Durg, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Samir Singh, Advocate
For Respondent/State	:	Shri Neeraj Sharma, Dy. Govt. Advocate

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

Order On Board

06/03/2017

Heard.

1. The applicant has been arrested in connection with Crime No.37 of 2016 registered in Police Station- Supela, District -Durg (C.G.) for alleged commission of offence under Sections 363, 366 and 376 IPC and Sections 5 & 6 of the Protection of Children from Sexual Offences Act, 2012.
2. Case of the prosecution, in brief, is that the applicant kidnapped the prosecutrix and it is alleged that thereafter, he committed rape on her. The prosecutrix stated to be less than 18 years of age when the applicant committed sexual intercourse with her.
3. Learned counsel for the applicant submits that the statement of the prosecutrix recorded under Section 164 Cr.P.C. falsifies the prosecution case because the prosecutrix has not stated regarding any sexual assault, rape etc. against her and all that she has stated is that she voluntarily had gone along with the applicant to another place where they resided for some time and then came back to their house. She has not made any allegation of sexual intercourse.

Therefore, in these circumstance, the applicant may be released on bail as the investigation is complete, charge sheet has been filed and when the applicant is not likely to abscond or in a position to tamper with the prosecution witnesses.

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, a prima facie case has been made out and though in her statement recorded under Section 164 Cr.P.C., there is no allegation of commission of rape, in her statement under Section 161 Cr.P.C., there is allegation of sexual intercourse by the applicant with the prosecutrix.
5. Having considered the submissions made by learned counsel for the parties, particularly taking into consideration the submission based on prosecutrix's statement under Section 164 Cr.P.C. and that investigation is complete, charge sheet has been filed and further taking into consideration that the prosecutrix has not stated regarding any rape committed on her by the applicant while making statement before the Magistrate under Section 164 Cr.P.C, 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