

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.1334 of 2017

- Beeru Deep S/o Babaji Deep, Aged About 22 Years (Labour Worker)
R/o Village Kachna, B. S. U. P. Colony, Block 15 Room No. 15 Police
Station Vidhan Sabha, Raipur, Civil And Revenue District Raipur
Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station
Vidhan Sabha, Raipur Civil And Revenue District Raipur Chhattisgarh

---- Respondent

For Petitioner	:	Shri J. R. Verma, Advocate
For Respondent/State	:	Shri Manish Nigam, PL

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

27/02/2017

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.93/2016 registered at Police Station Vidhan Sabha, Raipur for the offence punishable under Section 363, 366, 376 & 2(i) of IPC and Section 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 most important witnesses of the prosecution including the prosecutrix has now been examined in the trial Court, in which, she 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 committed. 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 08-05-2016 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 looking to the nature and gravity of allegation against the applicant and that other prosecution witnesses are yet to be examined before the Court below, the applicant is not entitled to bail.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration that the prosecutrix has now been examined before the trial Court and considering the submission of learned counsel for the applicant and even according to the evidence of the prosecutrix, in which, she stated regarding affair with the applicant and thereafter, they solemnized marriage and further that the sexual intercourse alleged to have committed by the applicant, after solemnization of marriage 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 08-05-2016, 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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