

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.1329 of 2017

- Ramkumar S/o Bharat Paikra, Aged About 21 Years R/o Village Bilari, Police Station Kasdol, District- Balodabazar Bhatapara, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through- Station House Officer, Police Station Kasdol, District Balodabazar- Bhatapara, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Amiyakant Tiwari, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, 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.567/2014 registered at Police Station Kasdol, District Balodabazar-Bhatapara for the offence punishable under Section 363, 366, 376 of IPC and Section 4 & 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, who is stated to be 15 years of age at the time of alleged commission of offence.

4. Learned counsel for the applicant submits that the applicant has been falsely implicated in this case. He submits that the prosecutrix in her statement recorded under Section 164 Cr.P.C. before the Magistrate, has clearly stated that she and the applicant had an affair and thereafter, they performed marriage and started living as husband and wife. There is nothing in the prosecution case that prior to solemnization of marriage, there was any sexual intercourse, therefore, in such a situation, as the prosecutrix, at the time of marriage 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. It is lastly submitted that the applicant is in jail since 31-01-2017 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 at the time, when the prosecutrix was taken by the applicant, the prosecutrix was less than 15 years of age, therefore, prima facie case of kidnapping is made out against the applicant. Thereafter, sexual intercourse was also committed by the applicant, as a result thereof, offence under Section 376 of IPC is also made out against the applicant.

6. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix and the submission of learned counsel for the applicant that the prosecutrix has not made any allegation regarding sexual intercourse against the applicant prior to marriage and as the prosecutrix and the applicant were married 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 31-01-2017 and that further custodial interrogation of the applicant is not necessary and he is not likely to abscond or tamper with the prosecution witnesses, 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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