

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1404 of 2017

- Hamid Kumar Dahariya S/o Mohanlal Dahariya, Aged About 28 Years, R/o Kaithi, Police Station Bhatapara (Gramin), District Baloda Bazar- Bhatapara, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through: Station House Officer, Police Of Police Station- Bhatapara (Gramin), District- Baloda Bazar- Bhatapara, Chhattisgarh

---- Respondent

For Applicant	:	Shri Anil Gulati, Advocate
For Respondent/State	:	Shri Aditya Sharma, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

06/03/2017

1. Heard.
2. The applicant has been arrested in connection with Crime No. 372/2016 registered in Police Station Bhatapara (Gramin), District Baloda Bazar- Bhatapara (C.G.) for the alleged commission of offence under Sections 363, 366, 376 of IPC and Section 4 & 6 of the Protection of Children for Sexual Offence Act, 2012.
3. Case of the prosecution, in brief, is that the applicant kidnapped and thereafter committed rape on the prosecutrix.
4. Learned counsel for the applicant submits that the applicant has been falsely implicated by the prosecution. The prosecutrix has recorded her statement under Section 164 of Cr.P.C. before the Magistrate and has stated that she has an affair with the applicant and they left their house on 03/12/2016 and went to Allahabad where they performed marriage and thereafter started living as husband and wife. It is submitted that the allegation of sexual intercourse is only after marriage and as the prosecutrix, at that time, was more than 15 years of age, in view of exception-2 to Section 375 of IPC, offence under Section 376 is not made out. Learned

counsel for the applicant further submits that charge-sheet has been filed and the applicant is not likely to abscond or temper with the prosecution witnesses.

5. On the other hand, learned counsel for the State has opposed the bail application. He submits that on the date of incident applicant is aged less than 18 years, love affairs or consent are immaterial and as the applicant has committed sexual intercourse, a prima facie case as alleged is made out, therefore, applicant may not be released on bail.
6. Having considered the submissions made by learned counsel for the parties, particularly taking into consideration the statement of the prosecutrix recorded under Section 164 of Cr.P.C. before the Magistrate, she and applicant had an affair and thereafter performed marriage and sexual intercourse after solemnizing the marriage and the applicant is not likely to abscond or temper with the prosecution witnesses, I am inclined to enlarge the applicant on bail.
7. 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