

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1533 of 2017

Vishwajeet Samudar S/o Chitranjan Samudar, Aged About 26 Years Wrongly Mentioned Samdar R/o Babla Govindpur, Police Station Shantipur, District Nandiya (West Bangal)

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Dongargarh, District Rajnandgaon Chhattisgarh

---- Respondent

Shri Aman Kesharwani, counsel for the applicant/s.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/03/2017

Heard.

The applicant has been arrested in connection with Crime No.587/2016 registered at Police Station – Dongargarh, Distt. - Rajnandgaon (CG) for alleged commission of offences under Section 363, 366, 376 of IPC and Section 4, 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Case of the prosecution is that the applicant kidnapped the prosecutrix and thereafter, committed rape on the prosecutrix.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated. It is submitted that the prosecutrix had gone along with the applicant voluntarily as she had an affair with him. He submits that the prosecutrix, in her statement under Section 164 CrPC before the Magistrate has stated that she had an affair with the applicant and the allegation of sexual intercourse is only after solemnization of marriage between the parties and as the prosecutrix is more than 15 years of age, in view of provisions contained in Exception 2 of Section 375 of IPC, offence under Section 376 IPC is not made out. It is further submitted that the

investigation is complete, charge sheet has been filed and the applicant is not likely to abscond or tamper with the prosecution witnesses. Therefore, the applicant may be granted bail.

4. On the other hand, learned State counsel opposes bail application and submits that as the prosecutrix is less than 18 years of age, consent is not material and looking to the nature and gravity of allegations, the applicant is not entitled to grant of bail.

5. Taking into consideration the submission of learned counsel for the applicant, particularly taking into consideration the statement of the prosecutrix under Section 164 CrPC recorded before the Magistrate that she had an affair with the applicant and they got married and the allegation of sexual intercourse is only after solemnization of marriage and at that time, the prosecutrix was more than 15 years of age and further submission based on provisions contained in Exception 2 of Section 375 of IPC, I am inclined to grant bail to the applicant.

6. Accordingly, the application is 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 Trial Court. He shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge