

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**(Single Bench : Hon'ble Shri Justice Ram Prasanna Sharma)****MCRC No. 5182 of 2017**

- Ashok Banjare S/o Mayaram Banjare, Aged About 22 Years R/o Village Amne, Police Station Kota, District Bilaspur Chhattisgarh.

----Applicant**Versus**

- State of Chhattisgarh Through The Station House Officer, Police Station Takhatpur, District Bilaspur Chhattisgarh.

---- Respondent

For applicant	:	Mr. Rohit Sharma, Advocate.
For respondent/State.	:	Mr. Luv Sharma, Panel Lawyer

Oral order

(Passed on 21-11-2017)

1. The applicant has preferred this application under Section 439 of the Cr.P.C. for grant of regular bail, who has been arrested on 29-5-2017 in connection with Crime No. 184 of 2017 registered at Police Station Takhatpur, District Bilaspur (CG), for the offence punishable under Sections 363, 366, 376 and Sections 4 & 5 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the Act, 2012").
2. The case of the prosecution, in brief, is that the date of birth of the prosecutrix is 20-8-2000 and the date of commission of offence is 20-5-2017 and at the time of offence the prosecutrix was 16 years and nine months and she was a child as per Section 2 (d) of the Act, 2012. The applicant kidnapped her for forceful sexual intercourse, committed rape on her and committed penetrative sexual assault on her and thereby he committed the aforesaid

offence.

3. Learned counsel appearing for the applicant submits that the prosecutrix and applicant were married to each other, therefore, the offence does not fall within the definition of Section 375 of the IPC and he is in custody since 29-5-2017, therefore he may be released on bail.
4. On the other hand, learned State counsel opposes the prayer for grant of bail.
5. I have heard learned counsel for the parties and perused the case diary.
6. Admittedly, prosecutrix is a child as per Act, 2012 and offence for penetrative assault on child is *prima facie* made out and as she is minor and is under guardianship of her parents, offence under Section 363 of IPC is *prima facie* made out. Other things that like the matter of evidence will be decided by the Court after conclusion of trial. Child Restraint Marriage Act does not permit a girl below the age of 18 years to marry with any one.
7. Looking to the *prima facie*, evidence collected against the applicant, this court is of the view that it is not a fit case where the applicant can be released on bail.
8. Accordingly, the application of the applicant for grant of bail is rejected.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju