

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.204 of 2017

- Sunil Kumar Khunte S/o Jagat Ram Khunte, Aged About 22 Years R/o Village- Nardha, Police Station- Nardha, District- Baloda Bazar Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through- Police Station- Gidhori, District- Baloda Bazar Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Rakesh Kumar Shukla, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, PL

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/01/2017

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.31/2015 registered at Police Station Gidhori, District Baloda Bazar for the offence punishable under Section 363, 366, 376 of IPC and Section 4 & 18 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 the investigation is complete, charge sheet has been filed and further detention of the applicant is not necessary. He submits that during investigation, statement of the prosecutrix was recorded under Section 164 Cr.P.C. by the Magistrate, in which, she has clearly stated that she and the applicant were in affair and marriage was also performed and thereafter, left native place in search of job.

It is submitted that the applicant and the prosecutrix were living as husband and wife and a child is also delivered from their wedlock. It is also submitted that at the time of alleged commission of offence, the prosecutrix was 16 & ½ years of age and the allegation that the child was also born out of their wedlock, by virtue of the provision contained in exception(2) of Section 375 IPC, offence under Section 376 of IPC is not made out.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that at the time of commission of offence, the prosecutrix is 16 & ½ years of age, therefore prima facie case is 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 recorded under Section 164 of Cr.P.C. before the Magistrate that she and the applicant were in affair and marriage was also solemnized and the allegation of sexual intercourse is only after the marriage and further taking into consideration the age of the prosecutrix at the time of marriage was approximately 16 & ½ years and the provision contained in exception (2) of Section 375 IPC, 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. It is also made clear that the applicant shall co-operate with the investigation and shall not tamper with the prosecution witnesses.

SD/-

(**Manindra Mohan Shrivastava**)

J U D G E