

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 2093 of 2017

Shatrughan Singh Porte S/o Veer Singh Aged About 32 Years R/o Village Jemra, Thana Pali, District Korba, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Pali, District Korba, Chhattisgarh.

---- Respondent

For Applicant	:	Ms. Sharmila Singhai, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, Panel Lawyer

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

Order On Board

19/05/2017

Heard.

1. This is the second application for grant of bail to the applicant. His earlier bail application was dismissed as withdrawn.
2. The applicant has been arrested in connection with Crime No.89 of 2016 registered in Police Station- Pali, District-Korba (C.G.) for alleged commission of offence under Sections 363, 366 & 376 IPC and Section 4 of the Protection of Children from Sexual Offences 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 prosecutrix has now been examined by the trial Court and her statement clearly shows that the applicant and the prosecutrix had an affair. She married with the applicant and the commission of sexual intercourse is only after solemnization of marriage, therefore, in view of provision contained in exception-2 to Section 375 IPC, prosecutrix being approximately 16 years and 8 months of age, offence under Section 376 IPC is not made out. It is further submitted that an important

witness of the prosecution namely the prosecutrix has been examined. The applicant is in jail since 28.5.2016, therefore, at this stage, he may be granted bail as he is not in a position to tamper with the prosecution witnesses or abscond.

5. On the other hand, learned counsel for the State has opposed the bail application. He submits that looking to the age of the prosecutrix being less than 18 years, prima facie, case of commission of offence under Section 376 as well as under penal provision of the POCSO Act is made out.
6. Taking into consideration the submissions made by learned counsel for the parties, taking into consideration the age of the prosecutrix and the submission that the applicant and the prosecutrix had an affair, they performed marriage and that the allegation of sexual intercourse is only after solemnization of marriage, I am inclined to enlarge the applicant on bail.
7. The application is accordingly 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 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