

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 327 of 2018

Raj Masih S/o Dilip Masih, Aged About 20 Years R/o Godhi S, Thana-
Bhatapara Rural, Distt. Baloda Bazar Bhatapara Chhattisgarh, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Thana- Bhatapara Rural, Distt. Baloda Bazar
Bhatapara Chhattisgarh, Chhattisgarh **---- Respondent**

For Applicant	:	Mr. Samir Singh, Advocate
For Respondent/State	:	Shri Majid Ali, Dy. G.A.

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

Order On Board

16/03/2018

Heard.

1. The applicant has been arrested in connection with Crime No.382 of 2017 registered at Police Station- Bhatapara Rural, Distt. Baloda Bazar (CG) for the alleged commission of offence under Section 363, 366, 376 of the IPC and Section 4, 6 of the Protection of Children from Sexual Offence Act.
2. Case of the prosecution is that the applicant kidnapped and thereafter committed rape on the prosecutrix.
3. Learned counsel for the applicant would submit that he has been falsely implicated and he has not committed any rape on the prosecutrix. He would further submit that prosecutrix, in her statement under Section 164 Cr.P.C made before the Magistrate has clearly stated that she had an affair with the applicant and she and applicant performed marriage. Learned counsel for the applicant would further submit that under Section 164 Cr.P.C. statement, there is no allegation that the applicant entered into any sexual intercourse with the prosecutrix, therefore, no case of commission of offence of rape is made out and the offence under Section 376 of IPC bailable in nature, therefore, the applicant may be granted bail.

4. On the other hand, learned State counsel opposes and submits that in the FIR and in the diary statement which has been clearly stated that the applicant committed rape on the prosecutrix, therefore, on the totality of the circumstances, prima facie case is made out and consent and marriage will not absolve the applicant of his criminal liability because the girl is less than 18 years of age.
5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the submission of learned counsel for the applicant based on prosecutrix's statement under Section 164 Cr.P.C. that she and the applicant had an affair and married and she has not stated regarding any sexual intercourse in that statement and that the investigation is complete, charge-sheet has been filed and that there is no material to show that the applicant is likely to abscond or tamper with the prosecution witnesses, the application is allowed.
6. It is directed that the applicant shall be released on bail on furnishing a personal bond in the sum of Rs.25,000/- along with two local sureties 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