

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 484 of 2018

Sheikh Sahil @ Golu S/o Sheikh Shahbuddin, Aged About 19 Years R/o Munshi Ismile Ward Bhatapara, District Balodabazar-Bhatapara, Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Bhatapara, Sahar, District Balodabazar-Bhatapara, Chhattisgarh, Chhattisgarh

---- Respondent

For Applicant	:	Shri Govind Ram Miri and Shri Basant Kaiwartya, Advocates
For Respondent/State	:	Shri Chandresh Shrivastava, Panel Lawyer

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

Order On Board

23/02/2018

Heard.

1. This is the second bail application for grant of bail to the applicant. The first application of the applicant was dismissed as withdrawn.
2. The applicant has been arrested in connection with Crime No.117 of 2017 registered in Police Station- Bhatapara Sahar, District Balodabazar, Bhatapara for the alleged commission of offence under Sections 363, 366, 376 IPC, Section 3 (1) (xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 4 & 5 of the Protection of Children from Sexual Offences Act, 2012.
3. Case of the prosecution, in brief, is that the applicant committed rape on the prosecutrix who is less than 18 years of age.
4. Learned counsel for the applicant would submit that the prosecutrix has now

been examined before the trial Court and her statement clearly shows that the applicant and the prosecutrix had an affair and thereafter they performed marriage both according to Hindu and Muslims Laws. Therefore, it would not be covered under the definition of rape as defined under Section 375 IPC nor it would be covered by the judgment of the Supreme Court in the case of **Independent Thought Vs. Union of India & Anr.** (2017) 10 SCC 800 as the said decision is prospective in nature and in the present case offence is alleged to have been committed in the month of March 2016.

5. On the other hand, learned counsel for the State has opposed the bail application. He submits that as the prosecutrix was minor, consent is immaterial and there is no clinching evidence on record to show that the applicant and the prosecutrix had married prior to alleged sexual intercourse.
6. Having considered the submissions made by learned counsel for the parties, particularly taking into consideration that the prosecutrix has now been examined by the trial Court and also the submission of learned counsel for the applicant that the prosecutrix has stated that sexual intercourse was committed only after solemnization of marriage between the applicant and her and the provision contained in exception-2 to Section 375 IPC and further that the judgment of the Supreme Court in the case of **Independent Thought** (supra) is declared prospective, I am inclined to allow the application.
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.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