

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MCRC No.1066 of 2018**

- Birendra Choudhary S/o Shri Suraj Choudhary Aged About 25 Years R/o Kusmi District Balrampur Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

**---- Petitioner**

**Versus**

- State Of Chhattisgarh Through P.S. Kusmi Balrampur Ramanujganj Chhattisgarh, District : Balrampur, Chhattisgarh

**--- Respondent**

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| For Petitioner       | : | Shri AK Prasad, Advocate |
| For Respondent/State | : | Shri S. Majid Ali, Dy.GA |

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**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**13/04/2018**

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.84/2017 registered at Police Station Kusmi, District Balrampur-Ramanujganj for the offence punishable under Section 363, 366 and 376(2)(n) of IPC and Section 3(2)(V) of the SC & ST (Prevention of Atrocities) Act, 1989 and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. Case of the prosecution is that the applicant kidnapped the prosecutrix, who is minor and committed rape on her.

4. Learned counsel for the applicant submitted that in so far as allegation of rape against the applicant, is concerned, is false and fabricated because the prosecutrix in her statement recorded under Section 164 of the Cr.P.C. before the Magistrate, has not made any kind of allegation of commission of offence of alleged sexual assault or aggravated sexual assault, therefore, at the most, commission of offence under Section 363 of IPC is made out, which is bailable

in nature. It is also submitted that no case for commission of offence under Section 6 of the POSCO is made out against the applicant as also looking to the fact that the applicant is in jail since 05-11-2017, investigation is complete, charge sheet has been filed and he is not likely to abscond or tamper with the prosecution witnesses, the applicant may be granted bail.

5. On the other hand, learned State counsel opposed the prayer for grant of bail on the submission that though in the statement recorded under Section 164 of Cr.P.C., there may not be allegation of rape or sexual assault or aggravated sexual assault but in the supplementary statement given before the Police, there is allegation of commission of offence of rape.

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 the Cr.P.C., there is no allegation of commission of offence of rape or sexual assault or aggravated sexual assault and the fact that the applicant is in jail since 05-11-2017, investigation is complete, charge sheet has been filed and the applicant is not likely to abscond or tamper with the prosecution witnesses, I am inclined to grant bail to the applicant.

7. Accordingly, the application is allowed. It is ordered that the applicant shall be released on bail on furnishing a personal bond of Rs.25,000/- along with two local surety of the like amount to the satisfaction of the trial Court on the condition that he shall appear before the trial Court regularly on each and every date, unless exempted.

SD/-

( **Manindra Mohan Shrivastava**)

**J U D G E**

