

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1084 of 2018

Suraj @ Sarveshwar Saver S/o Padulochan Saver Aged About 25 Years R/o Village Bijepur, Thana Raj Khariyar, Distt. Nawapara Odisha, ---- **Applicant**

Versus

State Of Chhattisgarh Through Thana Somni, Distt. Rajnandgaon Chhattisgarh, ---- **Respondent**

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

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

Order On Board

13/04/2018

Heard.

1. The applicant has been arrested in connection with Crime No.123 of 2017 registered at Police Station- Somni, District Rajnandgaon (CG) for the alleged commission of offence under Section 363, 366, 376 of IPC and Section 6, 8, 11, 12 of the Protection of Children from Sexual Offences Act.
2. Case of the prosecution is that the applicant kidnapped and thereafter committed rape on the prosecutrix, who is stated to be minor in age, on the date of alleged commission of offence.
3. Learned counsel for the applicant would argue that there is serious doubt with regard to the age of the prosecutrix even according to the prosecution, the age of the prosecutrix was more than 17 years and 10 months and in the ossification report attached along with the charge-sheet, the age of the prosecutrix stated to be more than 18 years. He would further submit that according to the statement of the prosecutrix under Section 164 Cr.P.C., it is clearly a case of consent. Therefore, at this stage, when investigation is complete, charge sheet has been filed and the applicant is in jail since 20.01.2018, the applicant may be granted bail.
4. On the other hand, learned State counsel opposes the bail application by submitting that according to the records collected during trial, prosecutrix is

less than 18 years of age and merely because in the ossification test, the age is shown to be more than 18 years, it cannot be said that prosecutrix was a major. Therefore, a prima facie, case is made out.

5. Having considered the submission of learned counsel for the parties, particularly taking into consideration the ossification report and the submission of learned counsel for the applicant that 164 Cr.P.C. statement, prosecutrix has come out with the case of consent with the applicant while living along with him, the application is allowed.
6. 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