

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 1493 of 2018

Ganesh @ Jeetu Kurre S/o Jhalu Ram Kurre Aged About 23 Years R/o- Goda, Police Station Palari, District- Baloda Bazar- Bhatapara, Presently Residing At Jhopadpatti, Gondwara, Police Station Khamtarai, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through- Station House Officer, Police Of Police Station-Palari, District Baloda Bazar- Bhatapara, Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh

---- Respondent

For Applicant	:	Shri B.L.Sahu, Advocate
For State	:	Shri Manish Nigam, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

11/05/2018

Heard.

The applicant has been arrested in connection with Crime No.161/2018 registered in Police Station - Palari, District – Baloda Bazar-Bhatapara (C.G.) for alleged commission of offences under Sections 363, 366, 376 of IPC and Section 4 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.

3. Learned counsel for the applicant would submit that the prosecutrix had an affair with the applicant. The applicant and the prosecutrix married and thereafter, they are blessed with a child aged 1 ½ years. Learned counsel for the applicant has also placed before the Court, copy of statement of the prosecutrix recorded under Section 164 CrPC in support of his case. Therefore, the applicant may be granted bail.

4. On the other hand, learned counsel for the State opposes bail application and submits that once the age of prosecutrix is found to be less than 18 years, the offence is committed and the fact that the prosecutrix married and child was begotten by the prosecutrix out of the marriage, will not absolve the applicant of its criminal liability.

5. From the statement of the prosecutrix under Section 164 CrPC, it is found that the prosecutrix and the applicant had an affair. They eloped and then married also. According to the prosecutrix's statement, she delivered a child 1½ years before. That means that the prosecutrix and the applicant had sexual intercourse sometimes early in the year 2016. According to the prosecution records, the date of birth of the prosecutrix is 01/06/2000. Therefore, on the date of alleged sexual intercourse between the applicant and the prosecutrix, the prosecutrix was even less than 16 years of age. Therefore, consent is immaterial. In view of the judgment of the Supreme Court in the case of **Independent Thought v. Union of India and anr. (2017) 10 SCC 800**, if the age of the prosecutrix is less than 18 years, consent would not absolve the applicant only on the ground that sexual intercourse was committed after solemnization of marriage. In addition, *prima facie* case of commission of offence of sexual assault is also made out in view of the provisions contained in POCSO Act which aims at protecting minor girls below 18 years of age from any kind of sexual act and it does not make any distinction whether it was made before or after marriage. Therefore, I am not inclined to grant bail to the applicant. The application is therefore rejected.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge