

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2070 of 2018**

- Dharmendra Markam S/o Patiram Aged About 20 Years R/o- Village- Banjari, P.S.- Bango, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through- Station House Officer, P.S.- Bango, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh

-- Respondent

For Petitioner : Shri VC Ottalwar with Shri Ishwar Jaiswal Advocates
 For Respondent/State: Shri Manish Nigam, PL

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.28/2017 registered at Police Station Bango, District Korba for the offence punishable under Section 363, 366-A, 376 of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

3. Case of the prosecution is that the applicant kidnapped and thereafter committed rape on the prosecutrix.

4. Learned counsel for the applicant argued that the present is a case, where the prosecutrix has clearly stated in her statement before the Court that she had an affair with the applicant and she of her own had gone along with the applicant and also performed marriage and the allegation of having committed sexual intercourse is only after solemnization of marriage. According to learned counsel for the applicant, in a case where marriage was solemnized, any sexual relation between the parties, would not amount to commission of offence of rape or offence under the POCSO Act, because, in such a case, no case for sexual

assault or aggravated sexual assault is made out because the prosecutrix is less than 18 years.

5. On the other hand, learned State counsel opposed the prayer for grant of bail.

6. After the authoritative pronouncement of the Supreme Court in the case of ***Independent Thought versus Union of India and Another, (2017) 10 SCC 800***, it cannot be said that after solemnization of marriage, the prosecutrix, even if she is minor, case of rape would not be made out.

7. The prosecutrix's age, as per the record of the prosecution as also the stand taken by the applicant appears to be less than 18 years. From the records of prosecution, it is revealed that the prosecutrix had an affair with the applicant and she went to temple and performed marriage with the applicant and then only physical relation was maintained. However, as the prosecutrix is less than 18 years of age, a prima facie case of sexual assault is made out under the provisions of POCSO Act. Moreover, even though, sexual intercourse was committed, after solemnization of marriage, in the absence of any statutory protection, it cannot be said that provisions of POCSO Act will not apply. Therefore, in these circumstances, this Court is not inclined to grant bail to the applicant.

8. Accordingly, the application is rejected.

SD/-

(**Manindra Mohan Shrivastava**)

J U D G E