

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.3643 of 2020

Chiteshwar @ Gangu Nirmalkar S/o Uderam Nirmalkar Aged About 21
Years R/o Village Udela, P.S. Simga, District Balodabazar-Bhatapara,
Chhattisgarh **----Applicant**

Versus

State Of Chhattisgarh Through- Station House Officer, Police Station
Simga, District Balodabazar-Bhatapara, Chhattisgarh **--- Respondent**

For Applicant	:	Mr. A.P. Sharma, Advocate
For State	:	Mr. Ravish Verma, G.A.

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

Order On Board

24/09/2020

Heard.

1. The applicant has been arrested in connection with Crime No.498 of 2019 registered at Police Station- Simga, District Baloda-Bazar, Bhatapara (CG) for the alleged commission of offence under Section 363, 366, 376 of IPC and Section 4,6 of POCSO Act.
2. The prosecution case is that the applicant abducted the prosecutrix and she was taken to the house of the applicant, where he married and committed sexual intercourse amounting to rape as the prosecutrix at that time and even now, she is a minor being less than 18 years of age.
3. Learned counsel for the applicant would submit that the statement of the prosecutrix recorded under Section 164 Cr.P.C. before the Magistrate clearly shows that the applicant and prosecutrix were having an affair and the applicant married the prosecutrix and started residing together as husband and wife and in that course, they had physical relation which cannot be said to be a case of rape. He further submits that trial is not likely to commence early and the applicant is in jail since 10.05.2020, therefore, at this stage, he may be granted bail.

4. On the other hand, learned counsel for the State opposes the prayer and submits that as per the school records, date of birth of the prosecutrix is 19.12.2003 meaning thereby that on the date of alleged commission of offence, she was less than 18 years, therefore, story of consent has no relevance.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration the material with regard to the age of the prosecutrix, present is not a fit case for grant of bail. The bail application is therefore rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge