

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4171 of 2020**

- Sitaram Patre S/o Manoj Patre Aged About 20 Years R/o Village- Kaudiya, Police Station- Seepat, Civil And Revenue District- Bilaspur, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through- The Station House Officer, Police Station- Koni, Civil And Revenue District- Bilaspur, Chhattisgarh

---- Respondent

For Applicant/s	:	Mr. Paras Mani Shriwas, Advocate.
For State	:	Mr. Sudeep Agrawal, Dy. A.G.
For Objector	:	Mr. Aditya Khare, Advocate along with Objector- Smt. Fekan Bai Madhukar, who is appearing through Help Desk of the High Court.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****05/10/2020**

Heard.

1. The applicant has moved this application for grant of bail as he is arrested in connection with Crime No.21/2020 registered at Police Station-Koni, District-Bilaspur, C.G. for the alleged commission of offence under Sections 363, 366 & 376 (2) (N) of IPC and Section 4 of POCSO Act.
2. Prosecution case is that the applicant abducted and took the prosecutrix to a different State and also married her and then committed sexual intercourse amounting to rape as the prosecutrix is minor in age.
3. Learned counsel for the applicant would argue that from the statement of the prosecutrix recorded under Section 164 Cr.P.C. before the Magistrate, it is clear that the prosecutrix and the applicant were known to each other and familiar since their childhood, which gradually turned into a love affair between them and prosecutrix went along with the applicant voluntarily without any compulsion. It is next submitted that the allegation of sexual intercourse is false and fabricated because when the prosecutrix gave her statement before the Magistrate, she did not allege any sexual intercourse by the applicant and

the medical opinion in this regard is also not definite that any sexual intercourse was committed on the prosecutrix.

4. On the other hand, learned State Counsel opposes and submits that the prosecutrix is a minor as the school records collected during investigation reveal her date of birth as 17.06.2002 that means, on the date she was taken away, on the date she was abducted, she was minor in age, therefore, consent is immaterial. He would also submit that in the case diary statement recorded under Section 161 Cr.P.C, the prosecutrix has clearly stated regarding commission of sexual intercourse, which amounts to rape as consent is immaterial.
5. Taking into consideration the submissions of learned counsel for the parties, particularly taking into consideration the submission that the prosecutrix did not allege any sexual intercourse while giving her statement under Section 164 Cr.P.C. before the Magistrate and that in the medical report also no definite opinion has been expressed and that applicant is in jail since 03.06.2020, investigation is complete and charge sheet has been filed, present is a fit case for grant of bail to the applicant.
6. Accordingly, the bail application is allowed. 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 one local surety of the like amount to the satisfaction of the Trial Court on the condition that-
 - a) He shall appear before the Trial Court regularly on each and every date, unless exempted from appearance.
 - b) He shall not in any manner, tamper with the prosecution witnesses.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge