

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4753 of 2020**

Kumar Jogi, S/o Prakash Jogi, Aged About 23 Years, R/o Gram Barkela Khurd
Police Station Patewa, District (Revenue and Civil)- Mahasamund
Chhattisgarh. **---- Applicant**

Versus

State of Chhattisgarh Through - Police Station Pithora, District (Revenue And
Civil) - Mahasamund Chhattisgarh. **---- Respondent**

For Applicant	:	Shri Sumit Jhawar, Advocate
For State	:	Shri Ravish Verma, G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****16/08/2020**

1. Heard on application for grant of bail.
2. Father of the prosecutrix Shri Santosh Tandan appears through video conferencing mode and state that he has no objection to grant of bail to the applicant.
3. The applicant has been arrested on 01.07.2020, on the allegation of having committed offence under Sections 363, 366, 376(झ)(ढ) of the Indian Penal Code. He moved this application for grant of bail in connection with Crime No.223/2019 registered at Police Station- Pithora, District- Mahasamund (C.G.).
4. Prosecution case is that the applicant kidnapped the prosecutrix and committed rape upon her after performance of marriage, though, the prosecutrix was minor.
5. Learned counsel for the applicant would argue that the prosecution case is particularly 164 CrPC statement of the prosecutrix itself shows that the applicant and the prosecutrix were having an affair and they married as well.

His next submission is that in her 164 CrPC statement, the prosecutrix nowhere stated that applicant committed sexual intercourse upon her, therefore, in these circumstances, offence under Section 376 is prima-facie not made out and as the applicant is in jail since 01.07.2020 and the charge-sheet has been filed, therefore, the applicant may be granted bail.

6. On the other hand, learned State Counsel opposes the prayer for grant of bail and submits that as per the charge-sheet, the date of birth of the prosecutrix is 17.05.2004, therefore, during the period 15.11.2019 to till date she was recovered from the custody of the applicant, she was a minor and in her 164 of CrPC statement she has stated regarding performance of marriage and that she is living with the applicant as husband and wife which clearly infers that the applicant must have subjected her to sexual intercourse as well. Therefore, consent is immaterial and offence is made out.
7. I have heard learned counsel for the parties and taking into consideration that in the 164 CrPC statement, the prosecutrix have not clearly stated regarding commission of sexual intercourse though she has stated about performance of marriage and that there is no evidence of any pregnancy.
8. 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/- with two local sureties for 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) The applicant shall not in any manner, tamper with the prosecution witnesses.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge