

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 5435 of 2020**

- Satyanarayan @ Narayan Rathiya S/o Shambhu Ram Rathiya Aged About 25 Years R/o Village Krindha, Thana Kapu, Tehsil Dharamjaygarh Civil And Revenue District : Raigarh, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Kapu, District : Raigarh, Chhattisgarh

---- Respondent

For Applicant	:	Mr. Sunil Sahu, Advocate.
For State	:	Mr. Gagan Tiwari, Dy. G.A.
For Objector	:	Mr. Raju Rathiya, brother of the prosecutrix, appears from the Help Desk of the High Court.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****19/10/2020**

Heard.

1. The applicant has moved this application for grant of bail as he is arrested in connection with Crime No.16/2020 registered at Police Station- Kapu, District : Raigarh, C.G. for the offence under Section 376 (3) of IPC and Section 5 of POCSO Act.
2. Prosecution case is that the applicant committed rape on the prosecutrix between the period from June, 2019 to August, 2019, due to which, prosecutrix became pregnant. According to the prosecution, at the time of alleged commission of offence, prosecutrix was about 15 years of age, therefore, a minor.
3. Learned counsel for the applicant would argue that the very fact that prosecutrix had a long standing affair and sexual relation with the applicant, due to which, she became pregnant, itself shows that the present is a clear case of consent. He would submit that no clinching material evidence collected to *prima facie* show that the prosecutrix was minor as no school records have been produced. He would next submit that even before the Court

below, mother of the prosecutrix stated no objection to grant of bail, therefore, at this stage, the applicant may be granted bail.

4. On the other hand, learned State Counsel opposes and submits that though school records have not available, radiological test result at the opinion of the doctor is that the prosecutrix is aged 14 to 15 years. He would next submit that the prosecutrix being minor, consent is immaterial.
5. Mr. Raju Rathiya, appearing on behalf of the prosecutrix from the Help Desk of the High Court, states that he has no objection to grant of bail.
6. Taking into consideration the submissions of learned counsel for the parties, particularly taking into consideration the material with regard to age of the prosecutrix, which *prima facie* reveals that the prosecutrix was minor when she was subjected to sexual intercourse, present is not a fit case for grant of bail.
7. The bail application is accordingly rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge