

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 6073 of 2020**

- Nitesh Kumar S/o Bramhanand Aged About 19 Years Residence Of Nehru Nagar Sector 5 ke paas Ward No. 40 Thana Balko Nagar, District- Korba, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through- Police Station- Balko Nagar, District- Korba, Chhattisgarh

---- Respondent

For Applicant	:	Shri Vikas Pandey, Advocate
For State	:	Shri Ravish Verma, Govt. Adv.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****29/09/2020**

Heard.

1. The applicant has been arrested in connection with Crime No.356/2020 registered at Police Station – Balko Nagar, District - Korba (C.G.) for alleged commission of offences under Section 376 (2) of IPC with Section 4, 6 of Protection of Children from Sexual Offences Act, 2012.
2. Prosecution case is that the applicant committed rape on the prosecutrix when she was a minor.
3. Learned counsel for the applicant would submit that the statement of the prosecutrix recorded under Section 164 CrPC clearly makes out a case of consensual relationship, affair and sexual relationship. He would submit that the prosecution itself has come out with two documentary evidence with regard to age of the prosecutrix, out of which, one is 11/09/2001 which means that the prosecutrix had attained majority on 11/09/2019 and the alleged act of sexual intercourse is alleged to be of the year 2020. Therefore, the applicant may be granted bail when investigation is complete and charge sheet has already been filed.

4. On the other hand, learned State counsel opposes prayer and submits that out of two documentary evidence with regard to age of the prosecutrix collected during investigation, one contained date of birth as 05/04/2003, which is more credible in nature. Therefore, consent is immaterial and the applicant would be *prima facie* involved in the alleged commission of offence because the prosecutrix was minor in age at the time of alleged commission of offence.

5. Taking into consideration the submission of learned counsel for the parties, particularly taking into consideration that the documentary evidence with regard to the age of the prosecutrix, prosecution has come out with two different documents and out of which, one records date of birth as 11/09/2001 and submission of learned counsel for the applicant that present is a case of love affair and consensual sexual relationship, I am inclined to grant bail to the applicant.

6. Accordingly, the 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 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) He shall not make any attempt to tamper with the prosecution witnesses.

Certified copy as per rules.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge