

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7632 of 2020**

- Basant Kumar Toppo S/o Shaukilal Toppo, Aged About 21 Years R/o Katakliya, P.S. Lailunga, District : Raigarh, Chhattisgarh

---- Applicant

Versus

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

---- Respondent

For Applicant	:	Mr. Manoj Kumar Jaiswal, Advocate.
For State	:	Mr. Lalit Jangde, Dy. G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****11/12/2020**

Heard.

1. The applicant has moved this application for grant of bail as he is arrested in connection with Crime No.131/2019 in Special Case No.436/2019 registered at Police Station- Lailunga, District- Raigarh, C.G. for the alleged commission of offence under Section 376 of IPC.
2. Prosecution case is that the applicant committed sexual intercourse with the prosecutrix on false pretext of marriage on 03.06.2019 and thereafter, he took the prosecutrix to another village where again he gave false pretext of marriage and kept on sexually exploiting the prosecutrix. Ultimately, he left the prosecutrix without marrying her, thereafter, the prosecutrix came back to her parental house and then, report was lodged on 12.07.2019 of committing sexual intercourse on false pretext of marriage.
3. Learned counsel for the applicant would argue that the attending circumstances, the conduct of the prosecutrix and statement of other witnesses show that the prosecutrix and the applicant were having love affair and though the allegation is of commission of offence on 03.06.2019, even according to the prosecutrix and her mother, the prosecutrix had gone along with the applicant on the very next day where after they resided till

12.07.2019. Therefore, it is argued that present is a case of consensual sexual relationship and allegation of false pretext of marriage is not made out.

4. On the other hand, learned State Counsel opposes and submits that the prosecutrix has clearly stated that the sexual intercourse was on false pretext of marriage, therefore, consent would be immaterial.
5. On *prima facie* consideration, it is found that according to the statement of the prosecutrix and Miniketan, when the prosecutrix, Miniketan and Kiran were grazing cattle in the open field, the applicant had come and thereafter, it is alleged that the applicant forcefully taken the prosecutrix. But at that time, neither Miniketan nor Kiran informed the parents of the prosecutrix. The prosecutrix also did not lodge any report either on that day or subsequent day but on the other hand, on the next day, she went along with the applicant to another village where they resided together for a month. Thereafter, the prosecutrix came back to her parental house and then lodged the report. Therefore, there is considerable force in the submission of learned counsel for the applicant that present is case of consensual sex and that the prosecutrix is major, offence could not be made out. Of course, it will be a matter of inquiry whether it is a case of false pretext of marriage. However, taking into consideration the aforesaid *prima facie* material and that prosecutrix and the applicant both are major and that FIR itself was lodged after long time of more than one month, during which period, the prosecutrix and the applicant resided together in one house, 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 two local sureties 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