

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7572 of 2020**

- Anil Kumar Patel S/o Shiv Kumar Patel Aged About 26 Years Caste Marar, R/o Village Pousara, Police Station Koni, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh. **---- Appellant**

Versus

- State Of Chhattisgarh Through Station House Officer, Police Of Police Station Koni, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh. **---- Respondent**

For Applicant	:	Shri N.K. Chatterjee, Advocate
For State	:	Shri Lalit Jangde, Dy.G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****20/11/2020**

1. Heard on application for grant of bail.
2. The applicant has been arrested on 22.07.2020, on the allegation of having committed offence under Sections 363, 366, 376(2)(a) of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act. He moved this application for grant of bail in connection with Crime No. 214/2018, registered at Police Station Koni, District- Bilaspur, Chhattisgarh.
3. Prosecution allegation is that the prosecutrix was abducted by the applicant when the prosecutrix was less than 17 years of age. She was taken to different places, marriage was also solemnized and out of relationship, a child is also born. According to the prosecution, as the prosecutrix was minor in age, the applicant committed offence

under Sections 363, 366, 376(2)(a) of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences.

4. Learned counsel for the applicant would argue that the prosecutrix's statement has been recorded under 164 CrPC makes it clear that the prosecutrix had voluntarily accompanied with the applicant because she and the applicant had long standing love affair which was objected to by parents of the prosecutrix. According to the prosecutrix, she went along with the applicant, resided with him, married and then gave birth to a child, therefore, it is a case of consent. His next submission is that the document with regard to age of the prosecutrix is highly doubtful and the prosecution is yet to prove that prosecutrix was less than 17 years of age on the day when she went along with the applicant, married and gave birth to a child. As investigation is complete, charge sheet has been filed, he may be granted bail.
5. On the other hand, learned State counsel submits that in the present case, during investigation, the documents with regard to age of the prosecutrix are collected by the investigation agency and as per the *Dakhil Kharij Register* of the School, date of birth of the prosecutrix is 17.7.2001. The prosecutrix was therefore, minor in age when she was taken away by the applicant and subsequent act of marriage, giving birth to a child though, it is said to be a case of consent, such consent is immaterial because of the age of the prosecutrix and therefore, the case is made out.
6. In the present case the 164 statement of the prosecutrix, as recorded

by Magistrate, shows that the applicant and the prosecutrix had a love affair and the prosecutrix's family was not accepting this relationship, therefore, the prosecutrix ran away alongwith the applicant, thereafter, they went different places and finally married and entered into relationship, resulting in, birth of a child. Therefore, on the statement of the prosecutrix under 164 of CrPC, it appears to be a case of consent.

However, the material with regard to age of the prosecutrix as collected by the investigation agency, the entry made in the *Dakhil Khariz Register* of the School, in which, date of birth of the prosecutrix is shown to be 17.7.2001. The prosecutrix ran away with the applicant on 9.7.2018 but that day, the prosecutrix age was less then 17 years. Therefore, prima-facie material with regard to the age of the prosecutrix was minor in age, therefore, the argument of consent would not hold ground.

7. In view of the above consideration, present is not a case of bail, at this stage, the application is rejected, however, the applicant would be at liberty to revive the application after examination of material witnesses with regard to proof of age of the prosecutrix.

(Manindra Mohan Shrivastava)

Judge