

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 884 of 2015

Ganeshwar @ Gagan Yadav S/o Chakradhar Yadav Aged About 35 Years R/o Village Gondhikala, Bhugdupara, Post Diwanpur, Police Station Pathalgaon, Civil And Rev. Distt. Jashpur Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Kapu, Civil And Rev. Distt. Raigarh Chhattisgarh.

---- Respondent

Shri Vinod Tekam, counsel for the applicant/s.
Ms. Sunita Jain, Panel Lawyer for the State.

Order On Board

11/09/2015

Heard.

The applicant is apprehending his arrest in connection with Crime No.67/15 registered at police station – Kapu, Revenue and Civil District – Raigarh, CG for alleged commission of offence under Section 376 of IPC and Section 3 (1) (12) and 3 (2) (5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (In short “the Act of 1989”).

2. Prosecution case is that the applicant giving false pretext of marriage, sexually exploited the women belonging to scheduled tribe.

3. Learned counsel for the applicant submits that even as per the statement of the prosecutrix herself, she had relationship and affair with the applicant for two years prior to the date of lodging FIR. It is submitted that she herself has stated on more than one occasions that for the last two years, she was having physical relations with the applicant. It is submitted that FIR has been lodged only when she carried impression that the applicant might not marry her. It is further submitted that even according to the prosecutrix, both the applicant and the prosecutrix were working as worker in the factory and there is nothing to show that the applicant was in a position

to dominate the will of the prosecutrix and exploit her sexually to which she would not have otherwise agreed. It is further submitted that the prosecutrix of her own statement is aged around 23 years. Therefore, it is a case of false implication and not a case of offence of rape is made out.

4. On the other hand, learned State counsel submits that the prosecutrix has stated that she had affair with the applicant for two years and it was on false promise of marriage that the applicant exploited her sexually. Therefore, it cannot be said to be a case of free consent.

5. Taking into consideration the submission of learned counsel for the parties, particularly the version of the prosecutrix herself that she was having affair with the applicant for about two years during which both of them had frequent physical relations time and again and it was not reported and after two years, only when a dispute arose because the marriage between them could not be materialized and there is no material collected by the prosecution that the applicant was in a position to dominate the will of the prosecutrix, bar under Section 18 of the Act of 1989 would not be attracted and the applicant is entitled to grant of bail in view of the orders passed by this Court in ***Satyaprakash Vs. State of C.G., 2004 (1) C.G.L.J. 162 & Abdul Abbas Vs. State of C.G., 2005 (2) C.G.L.J. 235.***

6. Accordingly, the application is allowed. It is directed that in the event of arrest of the applicant in connection with the aforesaid offence, he shall be released on bail by the arresting officer on furnishing a personal bond for a sum of Rs.25,000/- with one local surety of the like amount to the satisfaction of the arresting officer with following further conditions that:

- i. the applicant shall make himself available for interrogation by the police officer as and when required;
- ii. the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

Certified copy as per rules.

Sd/-

Manindra Mohan Shrivastava
Judge