

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 268 of 2020**

- Chanthu @ Sukheshwar Vishwakarma S/o Mahindar Vishwakarma Aged About 25 Years R/o Village Karouli, Police Station And Post Dhourpur, Tahsil Lundra, District Surguja Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through The Police of Mahila Police Station Ambikapur, District Surguja Chhattisgarh

---- Respondent

For Applicant	:	Shri Govind Dewangan, Advocate
For State	:	Shri Alok Bakshi, Addl. A.G.
For Objector	:	Shri Gulsher Khan, Advocate through Help Desk of Legal Services Authority, Ambikapur

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/08/2020**

Heard.

1. The applicant has been arrested in connection with Crime No.61/2019 registered at Police Station – Mahila Police Station, Ambikapur, District - Surguja (C.G.) for alleged commission of offences under Section 376 (घ), 323 read with Section 34 of IPC and Section 3 (2) (5) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Prosecution case is that the prosecutrix had come out of her house to respond to the call of nature and the applicant, at that time, came there in intoxicated condition and forcefully took the prosecutrix to a distance of about 1 km and committed rape on her. It is alleged that the applicant's friends also came there and they also committed rape on her. After this, the prosecutrix came to her house and informed the incident to her grand mother and when her father came back home, the matter was reported to the police station.

3. Learned counsel for the applicant submits that from the statement of the prosecutrix recorded under Section 164 CrPC before the Magistrate, it is disclosed that

the prosecutrix and the applicant were known to each other since long and they were having an affair. He would submit that in the prosecutrix's own statement, she has stated that she had gone along with the applicant on his motor cycle which shows that the prosecutrix had gone along with the applicant of her own and therefore, the allegations that the applicant committed rape on her, is wholly improbable. According to him, report was lodged against him, but at the spot when unknown persons committed rape on her, the applicant cannot be said to be involved. He would submit that FIR was lodged after about 9 days which itself renders the prosecution story wholly improbable.

4. On the other hand, learned counsel for the State and Objector would argue that the prosecutrix has stated that the applicant had been offering relationship but the prosecutrix had denied stating that she treated him as her brother. He further argues that the prosecutrix has clearly stated that the applicant committed sexual intercourse against her wishes, without consent of the prosecutrix and therefore, merely because the applicant gone along with the applicant, it cannot be said that the prosecutrix has consented sexual intercourse. He further submits that in any case, a case of consent cannot be made out because present is a case of gang rape as the prosecutrix has been raped by as many as four persons. Remaining three persons are friends of the applicant who had also gathered at the same spot and they all committed rape on her. It is submitted that the prosecutrix immediately informed about the incident to her grand mother but delay has been caused because prosecutrix's father was out of station in connection with his employment and when he came back, then report was lodged.

6. Having considered the submission of learned counsel for the parties and the material reflected from the charge sheet, particularly taking into consideration the statement of the prosecutrix that sexual intercourse was committed on her by the applicant and thereafter by three other persons at the same spot and at the same time alleging gang rape and further considering that the prosecutrix immediately informed the incident to her grand mother, present does not appear to be a fit case for grant of bail. The application is, accordingly, rejected.

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