

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No.3734 of 2020

Rajesh Sahu S/o Raghuram Sahu Aged About 19 Years R/o Under Torwa Bridge, Near Muktidham, Police Station- Torwa, Bilaspur, District Bilaspur, Chhattisgarh
---- **Applicant**

Versus

State Of Chhattisgarh Through- Station House Officer, P.S. Mahila Thana Bilaspur, District Bilaspur, Chhattisgarh
---- **Respondent**

For Applicant	:	Shri Amit Singh Chauhan, Advocate
For Respondent/State	:	Shri Sudeep Agrawal, Dy. A.G.
For Objector	:	Ms. Pragya Pandey, Advocate through Legal Aid

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/08/2020

Heard.

1. The applicant has been arrested in connection with Crime No.41 of 2019 registered at Police Station- Mahila Thana, Bilaspur, District Bilaspur (CG) for the alleged commission of offence under Section 376-D, 324, 506 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 came from Raipur to meet co-accused Masoom Beg. She stayed with Masoom Beg and then Masoom Beg called two other co-accused Shashi and Rajesh, which was resisted by prosecutrix and quarrel took place. It is further submitted that at the time of incident, when Masoom Beg went outside from the house, the prosecutrix was taken by Shashi and Rajesh to another place and ignoring request to leave her in the house of her friend in another colony, on the threat, prosecutrix was subjected to rape by the present applicant.
3. Learned counsel for the applicant argues that firstly the prosecutrix is not a minor but mature, aged 21 years. The very fact that she had voluntarily come from Raipur to Bilaspur and then stayed with Masoom Beg falsifies that prosecutrix was subjected to rape. He would further submit that the fact that the prosecutrix was staying all through the day along with the present

applicant and another co-accused shows that there was already existing relationship and whatever might have happened, was only consensual in nature. Further submission is that the allegation of rape is improbable because while the prosecutrix was being taken in the motorcycle by co-accused and the present applicant, as a lady, she did not raise voice nor cried for help and in the absence of any injury on the private parts, renders improbable prosecution story and smacks of false implication.

4. On the other hand, learned counsel for the State and Objector oppose the bail application and submit that the prosecutrix lodged an FIR on the same day at 23:30 p.m. in the night, in the police station making specific allegation of rape against the present applicant and co-accused Shashi. It is argued that merely because the prosecutrix came from Raipur to meet Masoom Beg, a case of consent for sexual intercourse with the present applicant cannot be made out. They further submit that irrespective of the age aspect, the prosecutrix has clearly stated regarding rape on her by present applicant and the co-accused and she has also sustained injury in her hand. This prima facie supports her allegation of injury followed by rape. It is also submitted by the State counsel that case of Masoom Beg is entirely different because there is no allegation of commission of offence on Masoom Beg.
5. Having considered the submission of learned counsel for the parties and the material disclosed from the charge-sheet and the case diary, the applicant has been involved in the alleged commission of offence of rape on the FIR which was quite promptly filed on the same day at 23:30 p.m. in the night, in which, there are specific allegation against the present applicant committing rape on the prosecutrix. The case of the present applicant is entirely different from that of Masoom Beg, who has been granted bail by this Court vide order dated 12.05.2020 in M.Cr.C. No.1141 of 2020. Against Masoom Beg, there is no allegation of rape whereas against the present applicant, there is specific allegation of commission of offence of rape. In the medical report, though no injuries have been found on the private parts, there is injury in her hand and the prosecutrix has stated that she was threatened and injured also. Therefore, taking into consideration the aforesaid material on record, present is not a fit case for grant of bail. Accordingly, the bail application is rejected.

Sd/-
(Manindra Mohan Shrivastava)
Judge