

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 661 of 2020

- Suraj Kumar Chandra S/o Gopal Prasad Aged About 28 Years
R/o Kirit Police Station Janjgir, District Janjgir-Champa,
Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through District Magistrate Janjgir, District
Janjgir- Champa Chhattisgarh.

---- Respondent

For Appellant	: Shri Sumit Singh, Advocate.
For Respondent/State	: Shri Ghanshyam Patel, G.A.
For Complainant	: Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

28/10/2020

1. Heard through video conferencing. Prosecutrix/complainant is present alongwith her Counsel through video conferencing. On being asked regarding the grant of bail application filed by the appellant, she opposes the same.
2. This appeal has been preferred under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') against impugned order dated 19.6.2020 passed by learned Special Judge (Atrocities) District Janjgir-Champa, (C.G.) in Bail Application No. 344/2020,

whereby the Trial Court has rejected the bail application of the appellant preferred under Section 439 of Cr.P.C. which relates to crime number 156/2020, registered at Police Station Navagarh, District Janjgir-Champa, (C.G.) for the offence punishable under Sections 376, 313 of the IPC and Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. According to the case of the prosecution, prosecutrix herein, is a married lady, aged about 26 years having three children. On 1.5.2020, she lodged a report against the appellant alleging therein that initially in the night of 6.2.2020 when she was at her house, appellant knocked her door and entered in her house. Thereafter, appellant committed forcible sexual intercourse with her. It is further alleged that on various occasions till 17.4.2020, appellant committed sexual intercourse with her due to which she became pregnant. On 19.4.2020 appellant gave her abortion tablet, due to which she got aborted. Prosecutrix disclosed the said facts to her husband, thereafter, she lodged report against appellant. On the basis of the said, offence has been registered. The appellant is in custody since 5.5.2020. An application under Section 439 of Cr.P.C. was preferred by the appellant before the learned Special Judge (Atrocities), District Janjgir-Champa, (C.G.) and the said has been rejected by the learned Special Judge vide order dated 19.6.2020. Hence, this appeal.

4. Learned Counsel appearing on behalf of the appellant submits that the appellant is innocent. Virtually, there was a previous dispute between the appellant and husband of the prosecutrix, therefore, the complainant/prosecutrix has falsely implicated the appellant in the present case. The Counsel further submits that if the entire case is taken as it is, it appears that prosecutrix was the consenting party in the alleged act. Since, prosecutrix is a married, major lady and a consenting party, therefore, *prima facie*, no offence under Section 376 of the I.P.C. is made out against appellant. The ultra-sound report of the prosecutrix is also found negative. Therefore, offence under Section 313 of the I.P.C. is also not made out. Appellant is in custody since 5.5.2020, charge-sheet has been filed and trial is likely to take time to conclude. Therefore, it is prayed that the appellant may be released on bail.
5. Per contra, learned Counsel appearing on behalf of the State and Counsel for complainant/prosecutrix oppose the appeal.
6. I have heard learned Counsel for the parties and perused the material available.
7. Considering the facts and circumstances of the case, evidence collected by the prosecution, arguments advanced by learned counsel appearing for the parties and further considering the facts that prosecutrix is a married lady having three children, alleged offence occurred between 6.2.2020 to 17.4.2020 and

F.I.R. has been lodged on 1.5.2020, appellant is in custody since 5.5.2020 and charge-sheet has been filed, therefore, without further commenting on other merits of the case, I am inclined to release the appellant on bail.

8. Accordingly, the appeal is allowed. The impugned order is set-aside.

9. It is directed that the appellant shall be released on bail on executing a personal bond for a sum of Rs. 25,000/- with one local solvent surety for the like sum to the satisfaction of the concerned Trial Court for his appearance before the said Court as and when directed.

Sd/-
(Arvind Singh Chandel)
Judge