

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 655 of 2020**

- Rajendra Nishad, S/o Roopchand Nishad, aged about 27 Years, R/o Village / Police Station Dallirajhara, Tahsil Dondi, District Balod (Chhattisgarh) Presently Residing at Jashpur, Pandrapath, Police Station, Tahsil and District Jashpur (Chhattisgarh)

----Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Police Station Jainagar, District - Surajpur (Chhattisgarh)

---- Respondent

For Appellant	Shri Anil Gulati, Advocate.
For Respondent/State	Shri Dinesh Tiwari, Deputy Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya
Order on Board

19/11/2020

1. This appeal by the accused/appellant under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is directed against the order dated 26.06.2020 passed by the Additional Sessions Judge (FTC), Special Judge, Surajpur, District Surajpur, C.G. in Bail Application No.193/2020, refusing to allow his regular bail under Section 439 Cr.P.C. The appellant is in jail since 17.06.2020 in connection with Crime No.149/2020 for the offence punishable under Section 376 of Indian Penal Code and under Section 3 (1)(B)(1) and Section 3(2) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station Jainagar, District Surajpur, C.G.

2. Allegation against the accused/appellant by the prosecutrix is that on the pretext of marrying her, appellant committed sexual intercourse with her. She also alleged that she was having love affair with the appellant for the last three years and appellant continuously made physical relations with her from 2017 to 2020. On 08.05.2020, when the appellant came to Surajpur to meet the prosecutrix, she accidentally came to know through his mobile phone that he is going to marry another girl. Thereafter, some dispute arose between them. From appellant's mobile, she got his Fiancee's mobile number and on 09.06.2020, she called on that mobile number, on which she came to know that the appellant has already married that girl. Then, she made a call to the appellant who told her that he did not marry another girl. Thereafter, on 14.06.2020, she went to the house of appellant where she came to know that he had already married another girl. On 16.06.2020, report to the above effect being lodged by the prosecutrix, offence under the aforesaid sections were registered against the accused/appellant.

3. Learned counsel for the appellant submits that appellant is

an innocent person and has been falsely implicated in this case. He also submits that prosecutrix has lodged the FIR after a long delay on 16.06.2020 and no proper explanation has been given by the prosecutrix regarding such inordinate delay in lodging the FIR. He also submits that there was love affair between the appellant and the prosecutrix and that she was a consenting party. He submits that prosecutrix was aged about 28 years at the time of incident and working as Home Guard. He further submits that the prosecutrix was married to one Sanjay Kumar and no any legal divorce had taken place between them. In these circumstances, *prima facie*, no offence can be made out against the appellant. He is in custody since 17.06.2020 and conclusion of the trial is likely to take some time. Therefore, he may be released on bail.

4. Prosecutrix is connected through video conferencing from District Legal Services Committee, Surajpur with her counsel Shri Vinod Tiwari and they oppose the submission made by the appellant's counsel. Counsel for the prosecutrix submits that it is true that prosecutrix was married to one Sanjay Kumar but as per their social custom, divorce took place between them in the year 2012-2013 and on the pretext of marrying the prosecutrix, the appellant continuously made physical relations with her. Therefore, no bail should be granted to the appellant by this Court.

5. Learned counsel for the State also opposes the submission made by the appellant's counsel and submits that on the pretext of marrying the prosecutrix, the appellant continuously made physical relations with her. Therefore, trial Court has rightly rejected the bail application of the appellant and there is no illegality or infirmity in the same warranting interference by this Court.
6. Heard learned counsel for the parties and perused the case diary.
7. From the material available in the case diary, it is seen that the appellant and the prosecutrix were having love affair prior to lodging of the FIR and there had been physical relations between them on number of occasions and no complaint was earlier lodged by the prosecutrix against the appellant regarding forcible sexual intercourse. As per prosecution case itself, the prosecutrix lodged the FIR only when she came to know that the appellant has married some another girl. It is not in dispute that the prosecutrix is a major girl and already married to one Sanjay Kumar. Thus, considering the over all facts and circumstances of the case, the nature and quality of evidence collected so far by the prosecution, the detention period of the appellant and the fact that conclusion of the trial is likely to take some time, without expressing any opinion on the merits of the case,

this Court is of the opinion that present is a fit case for grant of bail to the appellant. Accordingly, the appeal is allowed. It is directed that in the event of appellant executing a personal bond for a sum of Rs.25,000/- with one surety for the like amount to the satisfaction of the concerned trial Court, he shall be released on bail on the following conditions:-

- (i) He 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 fact to the Court,
- (ii) He shall not act in any manner which will be prejudicial to fair and expeditious trial, and
- (iii) He shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.
- (iv) He shall not involve himself in any offence of similar nature in future.

Sd/-
Gautam Chourdiya
Judge