

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 669 of 2020**

- Sanjay Kumar Sahu, aged about 23 years, S/o Ashok Kumar Sahu, R/o Mehta Nager, Bhatapara, P.S. Bhatapara Urban, District Baloda Bazar Bhatapara Chhattisgarh.

----Appellant**Versus**

- State of Chhattisgarh, Through Station House Officer, Police Station Bhatapara Urban, District Baloda Bazar Bhatapara Chhattisgarh.

---- Respondent

For Appellant	Shri Ravindra Sharma, Advocate.
For State	Shri Vimlesh Bajpai, Government Advocate.
For Objector	Shri Vineet Pandey, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order on Board****24/11/2020**

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 Special Sessions Judge (Atrocities), Baloda Bazar, District Balodabazar-Bhathapara, C.G. in Bail Application No.522/2020, refusing to allow his regular bail under Section 439 Cr.P.C. The appellant is in jail since 17.05.2020 in connection with Crime No.211/2020 for the offence punishable under Sections 363, 366, 376 of Indian Penal code, Under Sections 4 & 6 of POCSO Act and under Sections 3(2)(V-A) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 registered at Police Station Bhatapara Urban, District Balodabazar-Bhathapara, C.G.

2. As per prosecution story, the mother of the prosecutrix lodged a missing complaint stating in it that her daughter left the house without the knowledge of the family members. Thereafter, police recovered the prosecutrix from the custody of the appellant and registered the case against the appellant with the allegation that the appellant took the prosecutrix from the lawful custody of her guardianship and committed sexual intercourse with her on the pretext of marriage. It is further alleged that the prosecutrix is a minor girl and appellant abused her, committed sexual intercourse with her knowing well that she belongs to the Scheduled Caste.
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 there was love affair between the appellant and the prosecutrix and that she was a consenting party. In these circumstances, *prima facie*, no offence can be made out against the appellant. He is in custody since 17.05.2020 and conclusion of the trial is likely to take some time. Therefore, he may be released on bail.
4. Prosecutrix is present in person along with her counsel Shri Vineet Pandey and they oppose the submission made by the appellant's counsel. Counsel for the prosecutrix submits that on the pretext of marrying the prosecutrix, the appellant 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.
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 her statement recorded under Sections 164 and 161 of Cr.P.C, she admitted that she herself left her home and she forced the appellant to take her from home otherwise she would commit suicide. Thus, considering the over all facts and circumstances of the case, the nature and quality of evidence collected so far by the prosecution, the fact that the appellant and prosecutrix were having affair, *prima-facie* the age of the prosecutrix showing her to be above 17 years as per her mark-sheet, 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 two equivalent sureties 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