

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 671 of 2020**

- Ishwar Prasad Yadav S/o Chamar Singh Yadav, age 23 years, R/o village-Bagudega, P. S. Lalunga, Distt.- Raigarh, (C.G.).

---- Appellant**Versus**

- State of Chhattisgarh Through Officer in charge Police Station Lailunga, District- raigarh (C.G.).

---- Respondent

For Appellant	:Shri Prahlad Panda, Advocate
Respondent/State	:Dr. (Ms.) Veena Nair, Dy. A. G.

Hon'ble Shri Justice Gautam Chourdiya**Order on Board****15.12.2020**

1. Heard.
2. The appellant had earlier filed an application under Section 439 Cr. P. C. i.e. MCRC No. 4860 of 2020 which was dismissed as withdrawn with a liberty to the appellant to move duly constituted appeal under Section 14-A(2) of the Schedule Caste and Schedule Tribe Prevention of Atrocities Act, 1989 vide order dated 02.09.2020. Therefore, the appellant has filed the present appeal.
3. The appellant has filed this appeal under Section 14A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 12.06.2020 passed in Crime No.134/2019 by Special Sessions Judge (Atrocities Act), Raigarh

District – Raigarh rejecting his application under Section 439 of the Cr.P.C. The appellant is in jail since 15.07.2019 in connection with offences under Sections 363, 366 376 of IPC and Sections 4 & 6 of Protection of Children from Sexual Offences Act (In short “POCSO Act”) and Section 3 (1) (W) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station – Lailunga, District- Raigarh (C.G.).

4. According to the case of the prosecution, on 26.08.2018 the appellant took the minor girl of Scheduled Caste community away with him to Punjipathara and raped her on the promise of marriage and on second day he took to her village Bagudega on his residence but his parents' not allowed to enter the home. Then appellant and prosecutrix stayed in the house of the prosecutrix approximately for two and half months together with the consent of prosecutrix and her parents thereafter he went to earn for the livelihood and after returning on 08.06.2019 he again committed Sexual intercourse with her on pretext of marriage and later on refused to marry her. Hence FIR was lodged on 15.07.2019. On the basis of the FIR the offence registered under Section 363, 366, 376 of IPC and Section 4 & 6 of Protection of Children from Sexual Offences Act (In short “POCSO Act”) and Section 3 (2) (W) (i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered.
5. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case, the appellant stayed for about two & half months in the house of the prosecutrix with consent of herself and her parents also, it is clear that physical relation developed with the consent of the prosecutrix, therefore, the offence of rape is not made out against the appellant. He also submits that the

date of birth of the prosecutrix is not clearly mentioned on the report and was not proved by the prosecution that the prosecutrix was minor at the time of incident. Therefore, no offence is committed by the appellant and it is prayed that he be released on bail.

6. Prosecutrix is not present personally or through video conferencing. Notice was served on prosecutrix for appearing on 6.11.2020 but on the said date she was not connected nor present before this Court, thereafter again she has been informed to be present on 8.12.2020 but she was not present on the said date also.
7. On the other hand, learned counsel for the State opposes the submission made by counsel for the appellant and supports the impugned order.
8. Having heard learned counsel for the parties, considering the fact that the prosecutrix was more than 17 years of age at the time of incident, the appellant & prosecutrix were having physical relationship, they stayed for about two & half months in the house of the prosecutrix with consent of herself and her parents, the prosecutrix visited with the appellant at Poonjipathara and there made physical relation with the appellant, no prompt FIR was lodged, charge sheet has already been filed, the fact that there is no apprehension of the accused/appellant tampering with the evidence or absconding as stated by both the counsels for the parties and that disposal of the trial is likely to take some time, without commenting on merits of the case, I am 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 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**

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