

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 654 of 2020**

- Durgesh Yadav S/o Late Vishal Yadav Aged About 19 Years
Occupation Student, Resident Of Village Binjkot, Police Station
Bhupdeopur District Raigarh Chhattisgarh.

---- Appellant

Versus

- State of Chhattisgarh Through Police Chowki Jutmil Police
Station City Kotwali Raigarh, District Raigarh Chhattisgarh.

---- Respondent

CRA No. 665 of 2020

1. Deva Rana S/o Late Dukalu Rana Aged About 23 Years
Resident Of Village Kachaar , Police Station Bhupdeopur,
Tahsil Kharsiya, District Raigarh Chhattisgarh.
2. Dharmendra Sahu S/o Bharatlal Sahu Aged About 19 Years
Resident Of Village Pandripani, Police Station Bhupdeopur,
Tahsil Kharsiya, District Raigarh Chhattisgarh.

---- Appellants.

Versus

- State of Chhattisgarh Through The Chowki Prabhari , Police
Chowki Jute Mill , Thana City Kotwali, Raigarh , District
Raigarh Chhattisgarh.,

---- Respondent

For appellant in CRA No. 654 of 2020	:	Mr. F.S. Khare, Advocate.
For Appellants in CRA No.665 of 2020	:	Mr. Hari Agrawal, Advocate.
For respondent/State	:	Mr. Rakesh Sahu, Dy.G.A.
For Objector Advocate.	:	Mr. Chandra Deep Prasad,

Hon'ble Shri Justice Gautam Chourdiya, J.**Judgment on Board**

23-11-2020

1. Since both the aforesaid appeals arise out of same Bail Application No. 441 of 2020 and Crime No. 399 of 2020, they are heard analogously and are being disposed of by this common judgment.
2. Both these appeals have been preferred under Section 14(A) (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against impugned order dated 6-7-2020 (Annexure P/1) passed by learned Special Judge, SC & ST (PA) Act 1989 in Bail Application No. 441 of 2020, whereby the Special Judge has rejected bail applications of the appellants preferred under Section 439 of Cr.P.C. which relat to Crime No. 399 of 2020, registered at Police Chowki Jutmil, Police Station City Kotwali, Raigarh, District Raigarh (C.G.) for the offence punishable under Sections 366, 376, 376--D of IPC and Section 3 (1) (w) (1)(3)(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. According to the case of the prosecution, the victim who happens to be a member of Scheduled Caste was in talking terms with main juvenile conflict with law namely minor "V" (delinquent child aged around 17 years) and on 29-5-2020, the main accused told the victim to meet him and at round 1 a.m, in the night when the victim came out of her house, the main

delinquent on the pretext of roaming around on the motor-cycle, took the victim in the jungle of village Kacchar where both the victim and main delinquent stayed in a hut in the jungle from 30-5-2020 till 10-6-2020 and main delinquent made forcible sexual relationship with the prosecutrix/victim. Thereafter, parents of the prosecutrix/victim lodged a missing report in the Police Station and on the basis of that report, during investigation the prosecutrix/victim was recovered from the custody of the main delinquent on 2-6-2020 and thereafter on 4-6-2020 the prosecutrix/victim filed a written report in the Police Chowki stating the aforesaid facts against the main delinquent and on the basis of said report, FIR under Section 376 of IPC has been lodged against the main delinquent. Thereafter, on 19-6-2020 when the statement of the prosecutrix/victim was recorded under Section 164 of Cr.P.C., before the Judicial Magistrate, First Class-I, Raigarh, prosecutrix/victim named the present appellants and main delinquent stating that they together forcibly committed sexual intercourse with her. On the basis of report lodged by the prosecutrix, the present appellants have been arrested on 29-6-2020. thereafter, the appellants filed applications under Section 439 of Cr.P.C., before the learned Special Judge, SC & ST (PA) Act, 1989 Raigarh (CG) and the said applications have been rejected by the learned Special Judge vide impugned order dated 6-7-2020. Hence, these appeals.

4. Learned counsel for the appellants submits that the case of the prosecution is highly improbable and entire prosecution story is full of surmises and conjectures. It is further submitted that the names of the present appellants did not find place in the FIR lodged by the prosecutrix/victim and after 17- 18 days of the lodging of FIR, when her statement under Section 164 of Cr.P.C., was recorded before the Judicial Magistrate First Class -I, Raigarh, the names of the present appellants were mentioned. It is further submitted that the appellants have been falsely implicated in this crime and conclusion of the trial is likely to take some time, therefore, it is prayed that the appellant may be released on bail.
5. Per contra, learned counsel for the State opposes the appeal.
6. Prosecutrix/victim is present in court along with her Advocate Shri Chandra Deep Prasad. She has filed No Objection Certificate wherein it has been stated that she has no objection if the bail is granted to the present appellants.
7. I have heard learned counsel for the parties and perused the material available on record.
8. Considering the facts and circumstances of the case, particularly considering the fact that initially names of the present appellants were not mentioned in the FIR and only their names have been mentioned after 17 – 18 days of the lodging of the report when the statement of the

prosecutrix/victim was recorded under Section 164 of Cr.P.C., before JMFC, Raigarh and further considering No objection certificate given by the prosecutrix/victim wherein she has stated that she has no objection if the bail is granted to the appellants and further considering the fact that the appellants are in jail since 29-6-2020 and without commenting on merits of the case, I am inclined to release the present appellant on bail.

9. Accordingly, the both the appeals are is allowed. The impugned order dated 6-7-2020 (Anenxure P/1) passed by Special Judge, (Atrocities Act) , Raigarh, is set-aside. It is directed that all the appellants shall be released on bail on each of them 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 trial Court for their appearance before the said Court as and when directed.

Sd/-

(Gautam Chourdiya)

Judge

Raju