

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 678 of 2020

- Saleem Sheikh S/o Mohammad Jahid, Aged About 24 Years R/o Ambedkar Chowk, Gariyaband, Police Station And District Gariyaband Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through Police Station Gariyaband, District Gariyaband Chhattisgarh

---- Respondent

For Appellant	:	Mr. Mohd. Afroz Athar, Adv.
For Respondent/State	:	Mr. Rakesh Sahu, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

19.11.2020

1. Heard.
2. The appellant has filed this appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order dated 17.08.2020 passed in Crime No. No.219/2019 by Special Judge (Atrocities Act) District – Raipur rejecting his application under Section 439 of the Cr.P.C. The appellant is in jail since 29.09.2019 in connection with offences under Sections 363, 366, 376(2)(ब्र)(द), 506/34 of IPC, Section 6 of the Protection of Children from Sexual Offences, Act, 2012 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station – Gariyaband, District – Gariyaband, Chhattisgarh.

3. According to the case of the prosecution, the appellant has abducted the prosecutrix, who is a member of Scheduled Caste category and below the age of 18 years from her lawful guardianship, taken her to Gariyaband and Chitrakoot, U.P., where he committed sexual intercourse with her without her consent. Based on this, the FIR was lodged against the appellant. After completion of investigation charge sheet was filed against the appellant and charges under Sections 363, 366, 376(2)(क)(द) of IPC, Section 6 of the Protection of Children from Sexual Offences, Act, 2012 and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been framed by the trial Court.
4. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case. He submits that no evidence has been adduced by the prosecution that on the date of incident prosecutrix was minor and in her Statement recorded under Section 164 of the Cr.P.C., the prosecutrix has not made any allegation of rape against the appellant. Further more, the FIR has been lodged belatedly without proper explanation. In these circumstances, appellant be released on bail.
5. As per office report dated 18.11.2020, though notice has been served upon the sister of victim - dependent, but neither the victim is present nor any representation on her behalf is made.
6. On the other hand, learned counsel for the State opposes the submission made by counsel for the appellant and submits that on the date of incident prosecutrix was below 18 years of age as per *Dakhil-Kharij* Register of the school, which records her date of birth as 05.01.2003. The appellant has committed forcible sexual intercourse with her in Gariyaband as well as Chitrakoot, U.P. Further, looking to

statement of prosecutrix under Section 161 and 164 Cr.P.C. and the statements of the eye witnesses, it is clear that the prosecutrix was kidnapped from the hospital by the appellant. Therefore, the appellant is not entitled for bail.

7. Considering the facts and circumstances of the case, the *prima facie* evidence regarding age of the prosecutrix showing her to be minor on the date of incident, her statement under Section 161 of Cr.P.C. wherein she has stated against the appellant as also the statement of the eye witness who saw the appellant taking away the prosecutrix the provisions of the Protection of Children from Sexual Offences, Act, 2012 are applicable in this case and therefore, I do not find any illegality or perversity in the impugned order of the trial Court rejecting the appellant's bail application.
8. Accordingly, the appeal is dismissed.

Sd/-
(Gautam Chourdiya)
Judge