

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 675 of 2020

- Pushpak @ Pintu Mahapatra S/o Minketan Mahapatra Aged About 25 Years
R/o Village Chapka Tahsil And District Bastar, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through Police Station Ghotiya/ Ajak Jagdalpur,
District Bastar, Chhattisgarh.

---- Respondent

For Appellant : Shri Vikash A. Shrivastava, Advocate.
For Respondent/State : Shri Sameer Oraon, G.A.

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

03/11/2020

1. Heard through video conferencing. Prosecutrix/victim is present alongwith one local Counsel namely Shri G.K. Mishra through DLSA Jagdalpur through video conferencing. She is being identified by Shri G.K. Mishra, local Counsel. On being asked regarding the grant of bail application filed by the appellant, prosecutrix opposes the same.
2. This appeal has been preferred under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') against impugned order dated 4.8.2020 passed by learned Special Judge (Atrocities), Jagdalpur, District Bastar, (C.G.) in Special Sessions Trial No.

7/2020, whereby the Trial Court has rejected the bail application of the appellant preferred under Section 439 of Cr.P.C. which relates to crime number 26/2020, registered at Police Station Ghotiya/ AJAK Jagdalpur, District Bastar, (C.G.) for the offence punishable under Sections 376, 506/34 of the IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. According to the case of the prosecution, prosecutrix herein, is a lady, aged about 23 years who belongs to scheduled caste community. A report has been lodged by her against the appellant alleging that there was a love relationship between them and allegedly on 23.1.2017 for the first time, appellant committed sexual intercourse with her on false pretext of marriage. Thereafter, for two years, appellant committed sexual intercourse with her on various occasions at different places on pretext of marriage. Thereafter, appellant refused to marry with the prosecutrix. On the basis of the said report, offence has been registered. During course of investigation, the appellant was arrested and taken into custody on 10.7.2020. An application under Section 439 of Cr.P.C. was preferred by the appellant before the learned Special Judge (Atrocities), Jagdalpur, District Bastar, (C.G.) and the said has been rejected by the learned Special Judge vide order dated 4.8.2020. Hence, this appeal.
4. Learned Counsel appearing on behalf of the appellant submits

that the appellant is innocent and is falsely implicated in the present case. He further submits that prosecutrix/victim is major lady aged about 23 years. Referring to the contents of the F.I.R., he further submits that prosecutrix/victim seems to be a consenting party and she herself developed physical relationship with the appellant on her own will. Therefore, *prima facie*, no offence under Section 376 of the I.P.C. is made out against appellant. Appellant is in custody since 10.7.2020, charge-sheet has been filed and trial is likely to take time to conclude. Therefore, it is prayed that the appellant may be released on bail.

5. Per contra, learned Counsel appearing on behalf of the State opposes the appeal.
6. I have heard learned Counsel for the parties and perused the material available.
7. Considering the facts and circumstances of the case, evidence collected by the prosecution, arguments advanced by learned counsel appearing for the parties and further considering the facts that prosecutrix is a major lady, and from the contents of the F.I.R., it appears that prosecutrix was the consenting party in the alleged act, appellant is in custody since 10.7.2020, charge-sheet has been filed, therefore, without further commenting on other merits of the case, I am inclined to release the appellant on bail.
8. Accordingly, the appeal is allowed. The impugned order is set-

aside.

9. It is directed that the appellant shall be released on bail on 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 concerned Trial Court for his appearance before the said Court as and when directed.

Sd/-
(Arvind Singh Chandel)
Judge