

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 704 of 2020

- Devlal Yadav S/o Ramdas Yadav, aged about 60 years, R/o Thaggaon, Bagbudi Para, Police Station and District Koriya (C.G.)

---- Appellant

Versus

- State of Chhattisgarh Through : Station House Officer, Police Station Ajak Baikunthpur, District Koriya (C.G.)

---- Respondent/State

For Appellant : Shri Anil Gulati, Advocate

For Respondent/State : Ms. Veena Nair, Deputy Advocate General

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

20.11.2020

1. This appeal by the accused/appellant under Section 14A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is directed against the order dated 07.07.2020 passed by the Special Judge, SC & ST (PA) Act, Koriya, Baikunthpur (C.G.) in third bail application (unregistered), refusing to allow his regular bail under Section 439 Cr.P.C. Earlier two bail applications were also rejected on merits by the Special Judge. The appellant is in jail since 15.04.2020 in connection with Crime No. 12/2020 for the offence punishable under Section 376 of IPC and under Section 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station- Ajak Baikunthpur, District Koriya (C.G.).
2. Allegation against the accused/appellant is that on 09.04.2020 at about 10:00 am the prosecutrix/victim had gone to forest for grazing she-goats, at that time the appellant was also grazing she-goats. When the appellant seeing the prosecutrix alone on there, he committed forcible sexual intercourse with her. After rescuing from the appellant, the prosecutrix returned to her home and narrated the incident to her husband. After five days of the incident, the prosecutrix lodged the report to the police on

14.04.2020 and the appellant was arrested on 15.04.2020 for the offences under Section 376 of IPC and Section 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act since the prosecutrix belongs to scheduled tribe community.

3. Learned counsel for the appellant submits that the appellant is an innocent person and has been falsely implicated in this case. He also submits that the prosecutrix has lodged the F.I.R. after five delay i.e. on 14.04.2020 and no proper explanation has been given by the prosecutrix regarding such inordinate delay in lodging the F.I.R. He further submits that the appellant is in jail since 15.04.2020, the charge-sheet has already been filed and the conclusion of the trial is likely to take some time. Therefore, the appellant may be released on bail.
4. Prosecutrix/victim is connected through video conferencing with her counsel and they oppose the submission made by the appellant's counsel. The prosecutrix stated that on the date incident i.e. on 09.04.2020 she had gone to forest for grazing she-goats, at that time the appellant seeing her alone and he committed forcible sexual intercourse with her. She also stated that after the incident, she had remained in fever for about three days. Therefore, no bail should be granted to the appellant by this Court.
5. Learned counsel for the State opposes the submission made by the appellant's counsel and submits that in this case, there is no enmity between the prosecutrix and the appellant and the prosecutrix is aged about 50 years. He also submits that after the incident, the prosecutrix was remained in fever for about three days and on account of non-availability of conveyance, she was not lodged the F.I.R. in time, therefore, after five day i.e. on 14.04.2020 she lodged the F.I.R. He further submits that in rape case, four-five days delay in lodging the F.I.R. is not affected the prosecution case. Therefore, the Special Court has rightly rejected the third bail application of the appellant and there is no illegality or infirmity in the same warranting

interference by this Court.

6. I have heard learned counsel for the parties and perused the material available.
7. From the material available in the case diary, it is seen that there is no enmity between the prosecutrix/victim and the appellant, the incident took place on 09.04.2020 and the F.I.R. was lodged by the prosecutrix on 14.04.2020. Between the date of incident and lodging the date of F.I.R., the prosecutrix had remained in fever for about three days as per her medical examination and non-availability of conveyance, she lodged the F.I.R. after five days of the incident against the appellant that he committed forcible sexual intercourse against her. Thus, considering the over all facts and circumstances of the case, there is no delay in lodging the FIR by the prosecutrix and she has given proper explanation regarding delay in lodging the FIR, material available in the case diary and looking to the nature of allegation against the appellant, this Court is of the opinion that present is not a fit case for grant of bail to the appellant. Accordingly, the appeal is dismissed.

Sd/-
(Gautam Chourdiya)
Judge