

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 736 of 2020**

- Nutan Nishad son of Shri Hemgir Nishad, aged about 19 years, Caste Kenwat, R/o. Village Khadsa, Police Station Tumgaon, Tahsil and District- Mahasamund (C.G.),

---- Appellant

Versus

- State of Chhattisgarh Through Station House Office, Police Station Patewa, District- Mahasamund (C.G.).

---- Respondent

For Appellant	:Shri Shikhar Sharma, Advocate
For Respondent/State	:Shri Dinesh Tiwari, Dy. G. A.

Hon'ble Shri Justice Gautam Chourdiya**Order on Board****10.12.2020**

1. Heard.
2. 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 22.07.2020 passed in Crime No.67/2020 by Special Sessions Judge (Atrocities Act), Mahasamund District – Mahasamund rejecting his application under Section 439 of the Cr.P.C. The appellant is in jail since 07.04.2020 in connection with offences under Sections 363, 366 376 (2) (n) of IPC and Section 6 of Protection of Children from Sexual Offences Act (In short “POCSO Act”) and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station

– Patewa, District- Mahasamund (C.G.).

3. According to the case of the prosecution, at the time of incident the prosecutrix was aged about 16 years and the present appellant aged about 19 years allured the prosecutrix and took her with him and made sexual relationship with her several times. Hence a written complaint was lodged on 2.05.2020 by the father of the prosecutrix. On the basis of the said written complaint, the report has been registered under crime No. 67/2020 under Sections 363, 366 376 (2) (n) of IPC and Section 6 of Protection of Children from Sexual Offences Act (In short “POCSO Act”) and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered.
4. Learned counsel for the appellant submits that the appellant has been falsely implicated in the present case. The accused & prosecutrix both are from the same village and both were having a relationship for last three years. He also submits that in the similar matter in **MCRC No. 8033 of 2019 (order dated 28.01.2020) & MCRC No. 4740 of 2020 (order dated 16.09.2020)** the coordinate Bench of this Court has granted bail on the basis of 164 Cr.P.C. statement of the prosecutrix. In the instant case the 164 Cr. P. C. statement given by the prosecutrix, it is well evident that she herself have gone with the appellant out of her own will and the relationship was of consenting in nature. He further submits that they were having love affair for three years, and the FIR has been lodged after three years. Therefore, no offence is committed by the appellant and it is prayed that he be released on bail.
5. Prosecutrix is connected through Video conferencing from District & Sessio Court, Mahasamund and she objected to the application filed

by the appellant to release him on bail. She stated that she was having affair with the accused for about three years and she visited with the accused to Shirpur but accused refused to marry her, therefore, she lodged FIR.

6. On the other hand, learned counsel for the State opposes the submission made by counsel for the appellant and supports the impugned order.
7. Having heard learned counsel for the parties, having considered the nature and quality of evidence collected by prosecution, the 164 Cr. P. C. statement of the prosecutrix, the prosecutrix was 17 years of age at the time of incident, they were having affair and physical relationship continuously for three years and the prosecutrix visited Shirpur alongwith the accused, 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 two 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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