

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 255 of 2021

- Shrawan Kumar Diwan, S/o Resham Lal Diwan, Aged About 50 Years, R/o Village Mukta, P.S. Dabhta, District Janjgir Champa, Chhattisgarh.
---- Appellant

Versus

- State of Chhattisgarh, Through- Station House Officer, Chandrapur, District- Janjgir-Champa, Chhattisgarh.

---- Respondent

For Appellant	: Shri Ajay Ayachi, Advocate
For Respondent/State	: Shri Vimlesh Bajpai, G.A.
For Objector	: Shri Krishna Tandon, Advocate

Hon'ble Justice Shri Gautam Chourdiya

Judgment on Board

12.04.2021

1. This appeal by the accused/appellant under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is directed against the order dated 03.02.2021 passed by the Special Judge (Atrocity Act), District- Janjgir-Champa (C.G.) in Special Sessions Case No. 19/2020 refusing his regular bail under Section 439 of Cr.P.C. for the offence punishable under Section 376, 506 बी, 509 ख of IPC, Section 67, 67 (ए) of I.T. Act and Section 3 (2) (5) of the SC/ST Act, registered at Police Station- Chandrapur, District- Janjgir-Champa (C.G.). The appellant is in jail since 08.10.2020.
2. Case of the prosecution, in brief, is that the prosecutrix has lodged written complaint before the police that the present appellant made physical relation with her and captured obscene photos of her, on the basis of that he continuously forcibly made

physical relation with her, gave her threat to life and viral the same.

3. Learned counsel for the appellant submits that the allegations against the appellant are false and fabricated, the incident took place in the year of 2010 and report was lodged in the year of 2020 and there is inordinate delay in lodging of the FIR. The prosecutrix is well acquainted with the fact that the appellant is married person, both are having long standing love affair for about 10 years. The fact that prosecutrix is well grown up lady, she used to write letters to him there she admit that she is in love relation with him for long years and it is also proved that from the letter that whatever happened between them are consensual. Charge-sheet has already been filed. The appellant/accused is in jail since 08.10.2020, he has no criminal antecedents, there is no likelihood of the appellant tampering with the prosecution evidence or absconding and conclusion of the trial is likely to take some time, therefore, at this stage, he may be granted bail.
4. On the other hand, learned State Counsel opposes prayer for grant of bail and submits that the appellant committed rape on the prosecutrix, captured her obscene photos and on the basis of that he continuously made physical relation with her. However, he has no criminal antecedents.
5. Counsel for the objector vehemently objected to grant of bail to the appellant.
6. Having considered the submission made by learned counsel for the parties, taking into consideration the nature of allegation, detention period of the appellant, the fact that the prosecutrix is well grown up lady, she is aged about 32 years old, from the hand written letter of the prosecutrix it is proved that both are having love affair and it is also proved that whatever happened between them are consensual, incident took place in the year of 2010 and report was lodged in the year of 2020, there is

inordinate delay in lodging of the report, charge-sheet has already been filed, the appellant has no criminal antecedents, there is no likelihood of the appellant tampering with the prosecution evidence or absconding as admitted by both the counsels and conclusion of trial may take some time, without commenting anything on merits of the case, this Court is of the opinion that present is a fit case for grant of bail to the appellant. Accordingly, the appeal is allowed.

7. It is directed that in the event of the appellant executing a personal bond for a sum of Rs.50,000/- with two sureties of Rs. 25,000/- each to the satisfaction of the concerned Trial Court, he shall be released on bail on following conditions:-

(a) 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.

(b) he shall not act in any manner which will be prejudicial to fair and expeditious trial, and

(c) he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

(d) he shall not involve himself in any offence of similar nature in future.

Let a copy of this order be forwarded to the concerned police station forthwith who shall inform the trial Court in the event of appellant involving himself in similar offence in future.

Sd/-

**(Gautam Chourdiya)
Judge**