

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 776 of 2021

- Dharmendra Devendra S/o Shri Ashwant Lal Aged About 20 Years
R/o Pandripani, Police Station Charama , District North Bastar
Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Appellant.

Versus

- State Of Chhattisgarh Through The Station House In Charge,
Police Station Kanker (Ajak) , District North Bastar Kanker
Chhattisgarh., District : Kanker, Chhattisgarh

---- Respondent.

For Appellant	:	Mr. Sandeep Shrivastava, Adv.
For Respondent	:	Mr. Ishwar Jaiswal, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

11/11/2021

This appeal arises out of the impugned order dated 08.07.2021 passed by Special Judge (Atrocities) North Bastar, Kanker rejecting the Bail Application No.108/2021 (Crime No.1/2021) of the accused for the offences punishable under Section 376 IPC and 3(2) (V-क) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act.

2. Prosecution story in brief is that on 14.06.2021 when the prosecutrix, belonging to the scheduled caste category, had gone to attend her brother's marriage, the accused/appellant called her over phone to meet in a temple and committed sexual intercourse. Even the next day i.e. on 15.06.2021 they both had been together, wandered about on a motorcycle and again had sexual intercourse coupled with the act of kissing and pressing her breast.

3. Counsel for the accused/appellant submits that the sexual intercourse between the accused and the prosecutrix was consensual and there was a love affair between the two. According to the counsel for the accused/appellant, the accused/appellant has not committed any offence which can prima-facie attract the ingredients of the Special Act.

4. State counsel however, opposes the prayer for bail and holds the order impugned passed by learned Court below to be fully justified and submits that the accused must face the music for his act.
5. Heard counsel for the parties and perused the documents.
6. Having considered the material on record prima-facie it appears to be a case of consent. This fact has been reinforced by the statement of the prosecutrix made before this Court on 26.10.2021 by appearing through video conferencing, to the effect that she would not object to grant of bail to the accused. This apart, the prosecutrix is a major woman aged about 18 years and the act and manner in which she remained with the accused and enjoyed sex for two days, indicates her being a consenting party. Moreover, the accused/appellant is incarcerated since 22.06.2021 and therefore, it would be in the interest of justice to grant bail to him.
7. Accordingly, the appeal is **allowed** and the impugned order is set-aside. The appellant is directed to be released on bail on his furnishing a personal bond in the sum of Rs.50,000/- with one surety for the like amount to the satisfaction of concerned Court. He shall make himself present on all the dates as are given to him by the said Court, until the case itself is disposed of.

Certified copy as per rules.

Sd/-
(Vimla Singh Kapoor)
Judge

Jyotishi/Ajay