

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 762 of 2020**

- Akshay @ Bhanu Vishwakarma, son of Malu Vishwakarma, aged about 25 years, Caste – Lohar, resident of Harradand, Uper Basti, Police Station-Kunkuri, District – Jashpur (C.G.) (In jail)

---- Appellant**Versus**

- State Of Chhattisgarh Through : Station House Officer, Police Station – Kansabel, District – Jashpur (C.G.)
- Smt. Fuljiisiya Kujur, wife of Hermon Kujur, aged about 48 years, resident of Lodha Amba, Chowki-Dokra, P.S. - Kansabel, District – Jashpur (C.G.) [Complainant]

---- Respondents

For Appellant	: Shri J.K. Saxena, Advocate.
For Respondent No. 1/State	: Shri Sameer Uraon, Govt. Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Order on Board****15.01.2021**

1. The appellant has preferred this appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the impugned order dated 18.02.2020 passed in Crime No. 7/2017 by learned Special Judge (Atrocities Act), Jashpur District – Jashpur rejecting his application under Section 439 of the Cr.P.C. The appellant is languishing in jail since 10.12.2019 in connection with offences under Sections 376 & 302 of the Indian Penal Code and Section

3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station –Kansabel, Distt. Jashpur.

2. Case of the prosecution, in brief, is that applicant subjected to sexual intercourse with the deceased, who is mentally challenged girl, against her will and thereafter the applicant had murdered her and thereby committed the aforesaid offence.
3. Learned counsel for the appellant submits that the applicant has falsely been implicated in the crime in question as there is no incriminating material against the applicant which held him guilty for commission of offence under Sections 376 & 302 of the IPC and Section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He submits that the appellant is languishing in jail since 10.12.2019; trial is likely to take time for its final disposal and, therefore, the applicant is entitled to be released on bail.
4. On the other hand, counsel for Station submits that the appellant subjected to continuously sexual intercourse with the prosecution, who is mentally challenged and thereafter the manner in which after committing sexual intercourse with her, applicant has murdered the prosecutrix, the appellant is not entitled to be released on bail. He further submits that as per record, when DNA test of vaginal slide of deceased and blood sample of accused/appellant was conducted, their allele (samples) were found to be the same and thus it is conclusive proof against the applicant.

5. Mother of the prosecutrix namely – Smt. Fuljiisiya Kujur along her grandson – Shailesh Lakda are present before this Court and they are identified by counsel for the State. They have vehemently objected for grant of bail to the appellant.
6. I have heard learned counsel appearing for the parties and perused the case diary.
7. Looking to the entire material collected by the Investigating Officer during investigation and further looking to the DNA profile of applicant and deceased, which were found to be the same and the manner in which deceased, who was mentally challenged lady, is said to have been murdered by the appellant after committing sexual times several times, I am not inclined to release the appellant on bail. Thus, the bail application is rejected.

Sd/-

(Gautam Chourdiya)

Judge

D/-