

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No.7630 of 2021**

- Arun Tirkey, S/o Jems Tirkey, aged about 29 years, R/o village Rajouti, Police Station Narayanpur, District Jashpur (CG)
---- **Applicant (In Jail)**

Versus

- State of Chhattisgarh, through Station House Officer, Police Station- Jashpur, District- Jashpur (CG).

....**Non-applicant**

For Applicant	:	Mr. Anshul R Shrivastava, Advocate
For Non-applicant	:	Mr. Vaibhav Singh, Panel Lawyer.

Hon'ble Mr. Justice Parth Prateem Sahu**Order On Board****01.12.2021**

1. This is first application on behalf of applicant under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail as he in custody since 7.8.2021 in connection with Crime No.174/2021 registered at Police Station Jashpur, District Jashpur (CG) for commission of offence punishable under Sections 450, 376 (2) (N) of IPC.
2. Case of prosecution, in brief, is that prosecutrix lodged written report on 6.8.2021 stating therein that she is residing in the house of Ramesh Ram in Jashpur and prosecuting her studies of Master in Arts course. Applicant was also residing in same building and having talking terms with her. On 8.4.2021 applicant forcibly committed sexual intercourse with her which continued till 11.7.2021. Based on written report, crime in question is registered against applicant and he was arrested on 7.8.2021.
3. Mr. Anshul Shrivastava, learned counsel for applicant would submit that on the date of alleged incident, age of prosecutrix was 32 years. As per allegation, applicant established physical relationship with prosecutrix several times during the period commencing from 8.4.2021 to 11.7.2021; this fact itself indicates that prosecutrix was a consenting party and physical relationship, if any as alleged, between them was consensual.

Hence, offence as alleged will not be made out against applicant. Applicant is in jail since 7.8.2021, charge sheet has been filed. Hence he may be enlarged on regular bail.

4. On the other hand, Mr. Vaibhav Singh, learned Panel Lawyer for the State opposes the submissions made by learned counsel for applicant and submits that in report there is specific allegation of commission of forcible sexual intercourse by applicant with prosecutrix on more than one occasion, hence applicant is *prima facie* involved in commission of offence as alleged against him, therefore, he is not entitled for grant of regular bail.
5. I have heard learned counsel for the parties.
6. Taking into consideration facts and circumstances of case, nature of allegations; prosecutrix is lady aged about 32 years; as per allegation, applicant established physical relationship with complainant several times in between 8.4.2021 to 11.7.2021; applicant is in jail since 7.8.2021, without commenting anything on merits of case, I am inclined to enlarge applicant on regular bail. Accordingly, bail application is allowed and it is directed that applicant shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety in the like sum to satisfaction of trial Court concerned on the conditions that;
 - a) he shall appear before the trial Court concerned regularly on each and every date unless exempted from appearance.
 - b) he shall not, in any manner, tamper with the prosecution witnesses.
 - c) If applicant is found involved in similar offence in future, it will be open for the State to apply for cancellation of bail.

Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-