

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 919 of 2020

- Mohinder Pal Kashyap, aged about 33 years, son of Shri Chandrika Kashyap, resident of Gangajal, Police Station and Tehsil Navagarh, District Janjgir-Champa, Chhattisgarh

---- Appellant

Versus

- State of Chhattisgarh Through: District Magistrate Janjgir-Champa, Chhattisgarh

---- Respondent/State

For Appellant	:	Shri Ravindra Sharma, Advocate
For Respondent/State	:	Shri Dinesh Kumar Tiwari, Deputy Government Advocate

Hon'ble Shri Justice Gautam Chourdiya, J
Judgment on Board

19.01.2021

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 29.09.2020 passed by the Special Judge (Atrocities), Janjgir-Champa (C.G.) in Bail Application No. 700/2020, refusing to allow his regular bail under Section 439 Cr.P.C. The appellant is in jail since 30.06.2020 in connection with Crime No. 175/2020 for the offence punishable under Sections 376 & 506 of IPC and Section 3(2) (v) (a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, registered at Police Station- Navagarh, District Janjgir-Champa (C.G.).
2. Prosecution story in brief is that the prosecutrix aged about 30 years and the appellant aged about 33 years are well known to each other since last two years as they are resident of same village namely Gangajal. At the time of incident, the appellant was posted in Raipur as Constable in Police

Department. On February, 2019, the appellant went to his village and met the prosecutrix in her house and he made physical relations with the prosecutrix against her will. Thereafter, the appellant on promise of marriage continuously established forcible sexual relations with the prosecutrix, but subsequently he refused to marry her. Therefore, the prosecutrix lodged the F.I.R. against the appellant at Police Station Navagarh, District Janjgir-Champa (C.G.)

3. Prosecutrix is connected through video conferencing from District Legal Services Committee, Janjgir-Champa (C.G.) and she has objection to grant of bail to the appellant by this Court. Prosecutrix stated that she was having relation with the appellant from December, 2018, but the appellant has refused to marry her. Therefore, on 23.06.2020, the prosecutrix lodged the F.I.R. against the appellant.
4. Learned counsel for the appellant submits that the appellant has been falsely implicated in this case. He also submits that both the appellant and the prosecutrix are major, both were having physical relations from December, 2018 and she visited different places with him. He further submits that the prosecutrix was a consenting party to the act of the appellant as she had physical relations with the appellant for about three years. He submits that the appellant has no criminal antecedents, he is in jail since 30.06.2020, charge-sheet has been filed and conclusion of the trial is likely to take some time. Therefore, the appellant be released on bail. He has placed reliance on the decision in the matter of **Pramod Suryabhan Pawar v. State of Maharashtra and another, AIR 2019 SC 4010**.
5. On the other hand, learned counsel for the State opposes the appeal and submits that on pretext of marriage, the appellant committed forcible sexual intercourse with the prosecutrix, therefore, the learned trial Court rightly rejected the bail application of the appellant.

6. I have heard learned counsel for the parties.
7. In *Pramod Suryabhan Pawar* case (supra), the learned Supreme Court has observed that “*Quashing of FIR in offences of rape, cheating and criminal intimidation – Allegations in FIR that accused on promise of marriage established sexual relations with informant. No allegations in FIR that when accused promised to marry informant, it was done in bad faith or with intention to deceive her. Offences alleged not made out against accused*” and the Supreme Court quashed the FIR.
8. Considering the facts and circumstances of the case, the fact that the prosecutrix and the appellant were having physical relations since December, 2018 and thereafter continuously both were having physical relations for long time, they visited different places, she lodged the FIR after one & half years of the incident against him, and that the appellant is in jail since 30.06.2020, charge-sheet has already been filed, conclusion of the trial is likely to take some time, the appellant has no criminal antecedents as admitted by both the counsel, the decision relied by the counsel for the appellant in *Pramod Suryabhan Pawar* (supra) and in view of the decision in the matter of ***Maheshwar Tigga v. The State of Jharkhand*** passed in **Criminal Appeal No. 635 of 2020**, without expressing any opinion on the 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 and the impugned order is set aside.
9. It is directed that in the event of appellant executing a personal bond for a sum of Rs.50,000/- with two sureties of Rs.25,000/- 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.
- 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

vatti