



HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2278 of 2024

1 - Harish Sen S/o Late Krishna Kumar Sen Aged About 23 Years R/o Chhati Bastipara, Police Station- Kurud, District : Dhamtari, Chhattisgarh.

... Appellant

versus

1 - State of Chhattisgarh Through Station House Officer, Police Station- Kurud, District : Dhamtari, Chhattisgarh.

... Respondent(s)

Order Sheet

10/10/2024	Shri Sumit Singh, Advocate for the appellant. Shri Karan Bahrani, Panel Lawyer for the State. Heard on I.A. No.1 of 2024, which is an application for suspension of sentence and grant of bail. The appellant stands convicted and sentenced to undergo R.I. for 1 month with fine of Rs.500/-, RI for 1 year and fine of Rs.1000/-, RI for 1 month, RI for 5 years with fine of Rs.100/- and RI for 10 years with fine of Rs.500/- under Sections 323, 325, 506-Part-II, 450 and 376 IPC respectively with default stipulations, as ordered on 04.12.2024 by the Special Judge (Atrocities) Dhamtari in Special Session (SC/ST Act) Case No.17/2023.
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Learned counsel appearing for the appellant submits that the victim PW-1 is a married lady and consenting party in making physical relation with the appellant, however when her husband came there, he saw both of them in compromising position, he started assaulting the appellant and in between the scuffle the victim intervened and she received injuries. In that scuffling, the husband of victim also received injury. It would not be possible for one person to commit upon a lady particularly inside her house. He would refer the evidence of PW-1, the victim, and would demonstrate that she was a consenting party in the alleged act of sexual intercourse. There is no criminal antecedent against the appellant. The appellant is in jail since 29.05.2023, final adjudication of appeal will take its own time, therefore the appellant may be enlarged on bail. He would reply upon the judgment passed by the Supreme Court in Aasif alias Pasha Vs. State of U.P. & Others, 2023 SCC Online SC 1644 and Bharat Vs. State of M.P., 1992 (1) Crime 880 and also in Bhuvneshwar Sahu Vs. State of M.P. 2012(4)CGLJ 416.

The State counsel opposes the bail application and have submitted that from the evidence of victim it clearly reveals that the appellant entered into the house of victim and committed rape upon her. The victim received multiple injuries which has also been noticed by the doctor who examined the victim vide MLC report Ex.P/23. From the evidence of Doctor it also reveals that husband of victim has also been assaulted by the appellant and he also received

injuries. Had the victim was a consenting party, injuries would not have been received by her. In the FSL report, presence of sperms and semen were found. Thus, there is sufficient evidence against the appellant. Therefore, he is not entitled for bail.

Considering the submissions made by the counsel for the parties, considering the evidence led by the prosecution and the evidence of PW-1 & PW-2; further considering the MLC report of the victim as well as her husband and evidence of Dr. Sheela Rani Dewangan, PW-6, this Court is of the opinion that it is not a fit case in which substantive jail sentence imposed on the appellant can be suspended and he can be enlarged on bail.

Accordingly, I.A. No. 1 of 2024 is rejected.

List the appeal after eight weeks for final hearing.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Inder