

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

948 CRIMINAL APPEAL NO.1058 OF 2019

Shambaba @ Sham Bhagwat Suryawanshi
Age : 28 Years, Occu : Labour,
R/o : 1 Saibaba Nagar, Atmahatya Colony,
Ramananad Nagar, Jalgaon,
Taluka and District Jalgaon

... APPELLANT

VERSUS

1. State of Maharashtra,
Through the Remanand Police Station,
Taluka and District Jalgaon.

2. Manisha Bhika Pawar,
Age : 35 Years, Occu : Labour,
R/o. Sai Baba Nagar, Atmahatya Colony,
Taluka and District Jalgaon.

(Informant)
... RESPONDENTS

Mrs. R. S. Kulkarni, Advocate for the appellant
Mr. M. M. Nerlikar, APP for the respondent/State
Mr. Yogesh H. Jadhav, Advocate for respondent No. 2.

**CORAM : T. V. NALAWADE &
S.M. GAVHANE, JJ.**

DATED : 26-11-2019

ORAL JUDGMENT (PER T. V. NALAWADE, J.): -

1. Appeal is admitted.
2. Heard both the sides for final disposal.
3. Present proceeding is filed to challenge the order dated 17/09/2019 made by learned Additional Sessions Judge, Jalgaon in Special Case No. 40/2019 (Exhibit 4). The application filed for regular

bail is rejected by the learned Additional Sessions Judge, Jalgaon. Case is filed against the appellant for offence punishable under Sections 376(A)(B) of the Indian Penal Code and Sections 4,6,8,12 of POCSO Act and Section 3(1)(r)(s)(w) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocity) Act, 2015. This Court has carefully gone through the material which is available against the present appellant.

4. The crime came to be registered on the basis of report given by mother of the victim girl. At relevant time i.e. on 21/05/2019 the victim girl was aged about 4 years 11 months. Allegations are made that the appellant misbehaved with the girl and due to that she was crying. On enquiry she described the misbehaviour of the appellant. This Court has seen the medical record. No injury was found on the private part of the victim girl. This Court has also seen the statement of the victim girl recorded under 164 of the Code of Criminal Procedure.

5. In view of the material available against the appellant this Court holds that it is not desirable keep the appellant behind bars till the disposal of the case filed against him. He has been behind bars since 22/05/2019. Some conditions can be imposed to see that there is no tampering of witnesses. In view of the above, following order is passed.

ORDER

i) Appeal is allowed.

ii) The order dated 17/09/2019 made by learned Additional Sessions Judge, Jalgaon is hereby set aside.

iii) Application filed for bail is allowed.

iv) The appellant is to be released on his furnishing bail of Rs.30,000/- with PR and SB of Rs. 30,000/- with one or more solvent sureties. He is not to tamper the prosecution witnesses. He is not to commit similar offence. He is not enter Jalgaon Tahsil except for attending case till the disposal of case filed against him. On that day also he is not go to the locality where the victim girl and witnesses are living.

[S.M. GAVHANE, J.]

[T. V. NALAWADE, J.]