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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL No. 1500 OF 2018

Amir Sardar Bargeer ... Appellant
Vs.
State of Maharashtra & Anr. ... Respondents

Mr. Satyavrat Joshi, Nitesh J. Mohite, for the Appellant.
Mrs. S. V. Sonawane, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY, &
A. M. BADAR, JJ.**

DATE : MARCH 27, 2019

PC :

1. By this appeal filed under S. 14A of the Scheduled Caste & Scheduled Act (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act"], the Appellant is challenging the order dated 16.10.2018 passed by the learned Special Judge / Additional Sessions Judge, Ichalkaranji, in Criminal Bail Application No. 298 of 2018, thereby rejecting his claim for grant of bail in Crime No. 195 of 2018 registered with Shivaji Nagar Police Station, Ichalkaranji, for the offences punishable under U. 363, 376 of the Indian Penal Code, S. 4, 6 and 12 of POCSO Act, as well as S. 3(1) (w)(i)(ii), 3(2)(va) of the Atrocities Act.

2. Heard the learned counsel appearing for the Appellant

– accused. He argued that the alleged victim of the crime in question at the relevant time was 17 years and 5 months old. Her statement indicates that she joined company of the Appellant-accused to search his wife, as his wife had gone missing. Learned counsel further argued that medical report is not favouring case of the prosecution and the medical officer has not given any opinion regarding forcible sexual intercourse with the victim female child. Therefore, learned counsel argued that as investigation of the crime is over, the Appellant-accused ought to have been released on bail by the trial court.

3. The learned Additional Public Prosecutor opposed the appeal by contending that Appellant-accused has married thrice and he has enticed the victim female child. According to the learned APP, in such type of offences, positive medical evidence is not *sine qua non*.

4. We have considered the submissions so advanced by the learned counsel appearing for the parties and perused the material placed on record, including the charge-sheet. The FIR was lodged by the mother of the victim female child. The victim female child belongs to the Scheduled Caste. The Appellant-accused is her neighbour. The papers of investigation reveals that mother of the victim female child used to do the work of maid servant in the house of the Appellant-accused, who is a married person. The statement of wife of the Appellant-accused shows that on 2.6.2018

she noticed the Appellant-accused and the victim female child in intimate position, and therefore, she quarreled with her husband i.e. Appellant-accused. On the very same day, as seen from the record of investigation, the Appellant-accused alongwith the victim female child left the town and had gone to Goa. The victim female child was in the company of the Appellant-accused for more than one month and she has stated in her statement that the Appellant-accused had committed forcible sexual intercourse on 5-6 occasions with her when they were staying jointly in a rented room. The victim female child, according to the prosecution case, is below 18 years of age and is a child, as defined under S. 2(d) of the POCSO Act, 2012. She has not attained the age of consent. The medical report of victim female child shows that her hymen was found in torn condition. The Appellant-accused, as seen from the material gathered by the investigating officer, was a married person, and the victim female child was working as maid servant in his house. Prima-facie, there is evidence of enticement as well as penetrative sexual assault by the Appellant-accused on the victim female child. On this background, we find that no case for grant of bail is made out, nor any infirmity, as such, is found in the impugned order. In the result, appeal is dismissed. Needless to mention that all these observations are prima-facie, and shall have no bearing on the trial.

Sd/-
[A. M. BADAR, J.]

Sd/-
[INDRAJIT MAHANTY, J.]