

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPEAL NO.61 OF 2019

(Raju s/o Vitthalrao Katole ..vs.. State of Maharashtra, PS Butibori, Nagpur and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.S. Jaiswal, Counsel for the appellant,
Shri T.A. Mirza, Addl.P.P. for non-applicant No.1.

**CORAM : P.N. DESHMUKH AND
ROHIT B. DEO, JJ.**

DATED : 27-02-2019

Learned Additional Public Prosecutor has
tendered at bar affidavit-in-reply.

2. Heard Shri P.S. Jaiswal, learned Counsel for appellant and Shri T.A. Mirza, learned Additional Public Prosecutor for respondent-State. Respondent No.2 is also present. Prayer in this appeal is to quash and set aside order dated 07-1-2019 passed by learned Additional Sessions Judge, Nagpur in Special Atrocity Case No.78/2018 and releasing appellant on bail for offences punishable under Sections 376(2)(n), 506 of the Indian Penal Code, Section 4 of the Protection of Children from Sexual Offences Act read with Section 3(2)(v) and 3(1)(w) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

3. The learned Counsel for appellant has submitted that investigation is complete and charge-sheet is also

filed and by adhering to the documents filed with the charge-sheet has contended that no case of rape is made out against the appellant as from in the report itself, it can be seen that for a period of about four months from July 2018 to October 2018 respondent No.2 on her own visited appellant as and when called by him. It is further contended that in fact, whenever she had indulged into physical relations with appellant, had also accepted certain amount tendered to her by appellant willingly and as such submitted that in view of above stated facts, even if medical report of respondent No.2 is positive certifying therein that she is subjected to sexual intercourse, that by itself can be no grounds to hold appellant responsible for the offences of rape as from the report complainant who is married is found to be consenting party to the act of physical relation.

4. By further referring to the statements on record, it is contended that they are hearsay and in fact established that since respondent No.2 was residing with her parental home, in fact appellant being their neighbour was on visiting terms to her house as well as she was also on visiting terms with appellant.

5. In the background of above facts, it is, therefore, contended that as the investigation is complete and from the documents filed along with charge-sheet no case of rape can be said to be made out, appellant be released on

bail by imposing suitable conditions.

6. Perusal of affidavit-in-reply of respondent No.1 would reveal that respondent No.2-the prosecutrix is deaf and dumb and thus her report is reduced into writing with the assistance of teacher from school of deaf and dumb persons. The report would reveal first incident of alleged sexual assault on respondent No.2 at the hands of appellant on dated 16-7-2018 at 11-00 a.m. on which day appellant when was alone in his house called respondent No.2 who visited his house and then indulged into physical relationship. From the report, it is further material to note that thereafter they used to indulge into such act at every week, as and when appellant used to call respondent No.2 to his house.

7. In the report, it is also stated that on some occasions appellant used to provide Rs.200/- or Rs.300/- to respondent No.2 which she used to accept. Though according to her contentions, she was extended threats to not to disclose of such relations to anyone, we, at this stage, cannot find any reason to not to disbelieve the story of appellant of respondent No.2 joining his company by consent. Above finding find substantiated from the fact of delay in lodging report as it is noted that though the first such instance is alleged to have occurred on 16-7-2018, report is lodged on 29-10-2018 and according to the same almost on every week appellant as

well as non-applicant No.2 were indulged into physical relationship. In view of contention of report as afore said, *prima facie* we do not find to be a case of rape. In fact respondent No.2 appears to be consenting party who is admittedly a married and since having matrimonial discord with her husband, was staying with her parental home since about one year prior to incident.

8. Perusal of the statement filed along with charge-sheet which are of parents as well as sister and brother of respondent No.2 would reveal that they learnt of such facts as mentioned in the report from Puja, younger sister of respondent No.2 to whom she had informed about the incident by gesture. Except for that nothing can be established from his statement.

9. Similarly, from the statements of neighbours, it is found that appellant being neighbour of respondent No.2 was on visiting terms to her house. Similarly, she used to also visit to the house of appellant. According to neighbours, they learnt about involvement of appellant as afore stated in the report whose statements are also by way of hearsay evidence.

10. Having considering involvement of appellant as afore said and since the investigation is complete and charge-sheet is filed, case is made out for grant of bail by imposing conditions as per order below, more

particularly in view of the fact that appellant and respondent No.2 are residing as neighbours. Hence, following order :

i) Appellant shall be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

ii) While on bail, appellant shall not stay at village Shirul, Tahsil-Hingna, District-Nagpur where prosecutrix resides, and

iii) While on bail, appellant Raju Vitthalrao Katole shall mark his presence with Butibori Police Station on the first day of each month initially for six months and thereafter quarterly on the first day of such months pending trial.

JUDGE

JUDGE

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