

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 277/2019

Shri Sagar S. Lamkhede

..VS..

State of Maharashtra & anr.

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

Court's or Judge's orders

Shri R.S. Sardey, Advocate for the appellant
Shri T.A. Mirza, APP for the respondent no. 1
Shri P.S. Wathore, Advocate for the respondent no. 2

CORAM : Z.A.HAQ & VINAY JOSHI, JJ.
DATED : 04/05/2019

Application for bail under Section 439 of the Code of Criminal Procedure has been rejected vide order dated 01/03/2019 which is subject matter of this appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989"). Appellant came to be arrested in connection with Crime No. 368/2018 relating to offences punishable under Sections 363, 366A, 376, 376 (2) (i) and 506 of the Indian Penal Code r/w Sections 4 and 12 of the Protection of Children from Sexual Offences Act r/w Sections 3 (2) (v), 3 (2) (va) of the Act of 1989.

It is the prosecution's case that on 14/09/2018 in the evening around 5:15 pm, minor girl aged about 12 years was proceeding on foot towards house of her uncle. Accused accosted her and under the pretext of giving her lift, took her to secluded place i.e. backside room of village temple and had shown her obscene films on cellphone. Thereafter, accused by

use of force required minor victim to undress herself and then had sexual intercourse with her. On the date of incident itself, minor victim lodged report with concerned police on the basis of which offence came to be registered. Appellant – accused, while claiming bail, has submitted that he had merely given lift to victim, however, he has been falsely implicated in the case. It is argued that CCTV footage which is seized is not clear to identify either accused or his vehicle. It is submitted that victim has not stated history to Medical Officer while she was examined soon after the incident. Lastly, it is submitted that alleged incident took place near village temple which is a busy place, therefore, the story as has been narrated by victim is improbable.

On examination of record, it reveals that this is a case of forcible sexual intercourse on minor victim aged about 12 years. Notably within few hours of the incident, minor victim has lodged report with concerned police. She has specifically stated the reason as to why she accompanied accused on his motor bike. She stated that accused told her that he knows her father and under pretext of giving lift, accused took her to some other place and committed the crime. Though accused is unknown to the victim, however, during test identification parade, victim has specifically identified accused. Medical report indicates that there are injuries at fourchette and signs of forceful insertion exist. So also, the hymen was found to be ruptured. The medical report prima facie, strongly corroborates the victim's statement. Moreover, at the instance of accused, his clothes are seized. During course of investigation, police seized undergarments of victim where there are semens stains. Statement of some eye witnesses have been recorded who had seen accused

along with victim.

Though it is argued that place of incident is a busy place, however, it is to be noted that place of commission of crime is not the temple, but one room behind the temple. Non-disclosure of history to Medical Officer, if any, does not matter much since injury certificate clearly spells out injuries on the private parts of minor. Considering gravity of offence and nature of evidence, strong prima facie exists against the accused. Therefore, accused is not entitled for bail. In view of that, appeal carries no merit.

Hence, the appeal stands **dismissed**.

Since accused is in jail for more than six months, learned Special Court is directed to expedite the trial.

JUDGE

JUDGE

Ansari