

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 146 OF 2020**

**Nisha  
S.  
Chitnis**

Jagdish Prasad Dayalaram Savami

.Appellant

Vs.

The State of Maharashtra & anr.

.Respondents

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by Nisha S.  
Chitnis

Date:  
2020.09.29  
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Mr. R. N. Gite a/w Ms Avanti Inamdar, Advocate, for the Appellant

Mrs. M. H. Mhatre, APP, for the Respondent No. 1 – State

Mr. J. D. Khairnar, Advocate, for the Respondent No. 2

Respondent No. 2 is present through VC

**CORAM : REVATI MOHITE DERE, J.**

**DATE : 28.09.2020**

( THROUGH VIDEO CONFERENCING )

**P. C.**

. Heard learned counsel for the Appellant.

2. By this Appeal, the Appellant seeks his enlargement on bail in connection with C. R. No. 33 of 2019 registered with the Nandgaon Police Station, Nashik (Rural), for the alleged offences punishable under Sections 363, 366, 376(2)(I) of the Indian Penal Code; Sections 4 & 6 of the Protection of Children from Sexual Offences Act ( for short ‘POCSO’ ) and under Section 3(1)(W)(i)(ii) of the Scheduled Caste And Scheduled Tribe (Prevention of Atrocities) Act.

3. Learned counsel for the Appellant submitted that no offence as alleged had taken place and that the same would be evident from a perusal of the 164 statement of the prosecutrix recorded before the Magistrate. He submitted that even the Medical report of the prosecutrix shows that the prosecutrix had not sustained any injuries, to show that she was sexually abused by the Appellant.

4. Learned counsel for the Respondent No. 2 i. e. original complainant on the instructions of the Respondent No. 2 who is present through VC also relied on the 164 statement of the prosecutrix. He submits that no incident of sexual abuse had taken place.

5. Learned APP does not dispute the statement recorded by the Magistrate under Section 164 of the Cr.P.C.

6. Perused the papers. According to the prosecution, the prosecutrix's father was working with the Appellant, a contractor. According to the prosecution, the incident took place on 20.02.2019, when the Appellant allegedly took the prosecutrix on his motor cycle and touched her inappropriately on her private part. Pursuant to the

disclosure made by the prosecutrix to her mother i. e. Respondent No. 2, a complaint was lodged by the Respondent No. 2 as against the Appellant alleging the aforesaid offences. A perusal of the Medical Certificate shows that the prosecutrix had not sustained any injuries and presumably because the allegations are of inappropriate touching and as such, the question of injuries may not arise. Be that as it may, a perusal of the 164 statement of the prosecutrix shows that there was a quarrel between her father and the Appellant on account of payment of money. The prosecutrix in her 164 statement has specifically stated that no such incident had taken place.

7. Considering the aforesaid, further detention of the Appellant is not warranted. Accordingly, the Appeal is allowed and the order dated 14.05.2019 passed by the learned Additional Sessions Judge-2, Malegaon, Nashik below Exh. 1 in Cri. Bail Appln. No. 215 of 2019 is quashed and set aside and the Appellant is enlarged on bail on the following terms & conditions :-

### **ORDER**

- (i) The Appellant be enlarged on bail, on executing P. R. Bond in the sum of **Rs. 15,000/-** with one or two sureties in the like amount;
- (ii) The Appellant shall not tamper with the evidence or

attempt to influence or contact the complainant, witnesses or any person concerned with the case.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order digitally signed by Personal Assistant / Private Secretary.

**(REVATI MOHITE DERE, J.)**