

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

CRIMINAL APPEAL NO. 309 OF 2020

Shaikh Mehboob Shaikh Mehmood,
Aged about 23 years, Occupation : Labour,
R/o. Sudama Nagar, Taluka Shegaon,
District : Buldhana.

.... **APPELLANT.**

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Shegaon City, Taluka : Shegaon,
District : Buldhana.

2. Vaishali Mahendra Virgat,
R/o. Sudama Nagar, Shegaon,
Tq. Shegaon, Dist. Buldhana.

.... **RESPONDENTS.**

Shri P.D. Mane, Advocate for Appellant.
Shri S.J. Kadu, A.P.P. for Respondent No.1/State.
None for Respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : OCTOBER 23, 2020.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. **ADMIT.**

3. This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging the order dated 30th July 2020, passed by Special Judge, Khamgaon, District : Buldana rejecting the bail application of the appellant.

4. First Information Report bearing Crime No.0454 of 2020 was registered with the respondent No.1-Police Station against the appellant for the offences punishable under Sections 363, 366A, 376(2)(n), 323 and 506 of the Indian Penal Code, Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 read with Sections 3(1)(w)(i)&(ii), 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It was contended by the appellant that the victim was having love affair with the other accused and subsequently married that accused, but only with a view to harass the appellant a false case has been filed against the appellant.

5. The prosecution, by way of reply, stated before the learned Special Judge that the victim is 17 year old and was having affair with the appellant and from the date of registration of the First Information Report the appellant was absconding and there is every likelihood that he would influence the witnesses. The learned Special Judge rejected the bail application mainly on the ground that the documents on record show that the appellant as well as his wife threatened the victim and forced her to maintain physical relationship with the appellant at various places.

6. Shri P.D. Mane, learned Advocate for the appellant submitted that taking into consideration the age of the accused, which is about 23 years and age of the respondent No.2-victim who is aged about 17 years, since the investigation is complete and charge-sheet is filed, custodial interrogation of the appellant is not required. It is also submitted that after grant of provisional bail by this Court on 25/09/2020, the appellant has not misused the liberty.

7. This Court on 25/09/2020 issued notice to the respondent No.2. Shri S.J.Kadu, learned A.P.P. has placed on record a communication dated 15th October 2020 to show that the respondent No.2 is duly served with notice of the appeal. On 20th October 2020 the matter was kept back in the morning session and thereafter again the matter was adjourned to grant opportunity to the respondent No.2 to appear in the present matter and therefore, the present appeal is fixed today for hearing. In the morning session today, we have kept the present appeal for hearing in the afternoon session as the respondent No.2 was not represented. But in the afternoon session also the respondent No.2 has not appeared. Therefore, we are deciding the present appeal in the absence of the respondent No.2.

8. Having considered the charge-sheet, we find that considering the age of the accused which is about 23 years and the age of the victim, who at some places is shown to be having aged about 16 years and at some places

it is stated to be 17 years. The charge-sheet is filed and investigation is complete. Therefore, custodial interrogation of the appellant is no longer necessary. The appellant has made a statement in the appeal that the appellant has no antecedents to his discredit. After release of the appellant on provisional bail on 25th September 2020, the appellant has not misused the liberty granted by the said order. We, therefore, feel that the appeal deserves to be allowed and the order of provisional bail, granted on 25th September 2020, needs to be confirmed.

9. We, therefore, pass the following order:

- i) The impugned orders dated 23rd June 2020 and 30th July 2020 passed by Special Judge, Khamgaon, District : Buldana are quashed and set aside.
- ii) Order dated 25th September 2020 passed by this Court, releasing the appellant on provisional bail, is confirmed on the same conditions stated in the said order.

With the above observations, the criminal appeal is **allowed**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)