

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

CRIMINAL APPEAL NO. 359 OF 2020

Mubin Khan Israil Khan,
Aged about 35 years, Occ : Labour,
R/o. Daryabad, Tah. Achalpur, Amravati.

.... **APPELLANT.**

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station Paratwada, Amravati.
2. Reshma Chotu Bhalavi,
Through her Natural Guardian
Chotu Bisan Bhalavi,
R/o. C/o. Sanjay Ponde,
Hinvatkhedda, Tah. Achalpur,
Distt. Amravati.

.... **RESPONDENTS.**

Shri M.N.Ali, Advocate for Appellant.
Shri S.J.Kadu, A.P.P. for Respondent No.1/State.
Shri Deepak S. Khushalani, Advocate for Respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : OCTOBER 28, 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 27th July 2020 passed by the Additional Sessions Judge-1, Achalpur rejecting Criminal Bail Application No.360 of 2020.

4. The First Information Report bearing Crime No.192 of 2020 came to be registered against the appellant for the offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(w)(i)(ii), 3(2)(va), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It was alleged in the First Information Report that the age of the victim at the time of the incident was about 13½ years. In the month of October 2019 after the festival of Deepawali the appellant told the father of the victim to send her on labour work at his site, for which she would get Rs.200/- per day and he would fetch her back. Accordingly, father allowed the victim to go with the appellant. While returning, the appellant took her to orange orchard and physically assaulted her. Again on 11th April 2020 the appellant had sexual intercourse with the victim. On 13th April 2020 when the victim missed the menstrual cycle, on inquiry by her mother, she disclosed the fact of sexual intercourse by the appellant and thereafter report came to be lodged against the appellant.

5. Shri M.N.Ali, learned Advocate for the appellant submitted that there is considerable delay in filing the F.I.R. as the incident took place in the month of October 2019 and report is filed in April 2020. It is also submitted that the appellant was in custody for more than five months. He further submitted that the age which was disclosed by the victim was 15 years and not 13½ years, as alleged by the prosecution. Therefore, it is submitted that the order of provisional bail granted on 23rd September 2020 needs to be confirmed.

6. Shri S.J. Kadu, learned A.P.P. for the respondent No.1 and Shri Deepak Khushalani, learned Advocate for the respondent No.2 strenuously opposed grant of bail to the appellant. They submitted that considering the age of the victim, the appellant does not deserve to be released on bail as the same would affect the victim as she is of tender age.

7. Having heard the learned Advocate for the appellant and the Advocate for the respondents, we are of the opinion that considering the material on record, we find that there is serious dispute about the age of the victim. Though as per the documents relied upon by the prosecution on page Nos. 62 and 63 the age of the victim was about 12½ years but at the time of report she was shown to be 15 years. From the allegations in the F.I.R. it appears that the victim was pregnant at the time of medical examination, which shows that the victim was biologically matured enough to conceive.

The appellant claims to be labour and it is stated that no crime is registered against the appellant. After release of the appellant on provisional bail vide order dated 23rd September 2020, the appellant has not misused the liberty.

8. Hence, we pass the following order:

- i) The impugned order dated 27th July 2020 passed by Additional Sessions Judge, Achalpur in Criminal Bail Application No.360 of 2020 is hereby quashed and set aside.
- ii) The order dated 23rd September 2020 granting provisional bail is hereby confirmed on the same conditions as stated in the said order.

The Criminal Appeal stands **allowed** in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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