

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

CRIMINAL APPEAL NO. 791 OF 2018

- 1] Tejram S/o Hagru Nagpure,
Aged about 40 years,
R/o. Lohara, Post Ratnara,
Tahsil and District : Gondia,
- 2] Santosh S/o Tejram Nagpure,
Aged about 38 years, Occ. Nil,
R/o. Lohara, Post Ratnara,
Tahsil and District : Gondia,
- 3] Devesh S/o Omkarlal Nagpure,
R/o. Kamargaon, Post : Kamargaon,
Tahsil : Goregaon, Distt : Gondia,
- 4] Jitendra S/o Purushottam Dhekwar,
Aged about 49 years,
R/o. Lohara, Tahsil and District : Gondia,
- 5] Prasad S/o Khemchand Lilhare,
Aged about 46 years,
R/o. Lohara, Tahsil and
District : Gondia. ... **APPELLANTS**

...V E R S U S...

- 1] State of Maharashtra,
through Police Station,
Dawaniwada, District : Gondia.
- 2] Ku. Dhanashree Ambarlal Naik,
Aged about 16 years., Occ. Education,
R/o. Lonara, Gondia, Tah. and District : Gondia.

(Amended as per Registrar order
Dt. 18.12.2018.)

... **RESPONDENTS**

Shri N. R. Tekade, Advocate for Appellants.

Shri S. S. Doifode, A.P.P. for Respondent No.1/State.

**CORAM:- Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATED :- 07.12.2020

ORAL JUDGMENT (PER: Z. A. HAQ, J.) :-

1. Heard.

2. **Admit.**

3. None appears for the respondent No.2- victim, though served.

4. By this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “Act of 1989”), five out of six accused have challenged the order passed by the Special Court rejecting the application filed by them under Section 438 of the Code of Criminal Procedure. The appellants – accused apprehend arrest in connection with Crime No.234/2018 registered against them for the offences punishable under Sections 376(2)(i) and 376(2)(n) of the Indian Penal Code,

Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(2)(v) and 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Initially, the First Information Report came to be registered against Gajendra Tejaram Nagpure, (aged about 24 years). The accusations made by the respondent No.2 – victim, being that Gajendra sexually exploited her because of which she became pregnant. However, after abortion, Gajendra maintained distance and avoided to meet the victim. Subsequently, supplementary statement of victim came to be recorded, in which she made accusations against the present appellants that they were instrumental in forcible abortion against the wishes of the victim.

6. The prayer of the appellants- accused for pre-arrest bail is opposed by learned A.P.P. on the ground that Section 18 of the Act of 1989 bars the exercise of jurisdiction under Section 438 of the Code of Criminal Procedure.

7. With the assistance of the learned Advocate for the appellants and the learned A.P.P., we have examined the report lodged by the respondent No.2 and the supplementary statement of the respondent No.2 – victim. We find that *prima facie*, the ingredients of the offences punishable under Sections 3(2)(v) and

3(1)(w)(i)(ii) of the Act of 1989 are not fulfilled and therefore, at this stage, it cannot be said that the bar created by Section 18 of the Act of 1989 would be attracted. The prosecution will have to prove its case regarding the offences under the Act of 1989 at the trial by leading evidence.

8. As far as the merits of the matter are concerned, it is relevant to state that the appellants- accused are protected by this Court by order dated 19.12.2018, which protection continued till date. The respondents i.e. Investigating Agency and the victim have not made any complaint against the appellants – accused that the protection granted by this Court is misused by them.

9. Considering the facts of the case, we pass the following order.

i] The impugned order passed by the learned Additional Sessions Judge is set aside.

ii] It is directed that in the event of arrest in connection with Crime No.234/2018 registered with the respondent No.1 – Police Station, the appellants- accused be released on bail on executing PR bond of Rs.20,000/- each. The appellants shall furnish the PR bonds within 15 days from today.

iii] The appellants shall co-operate with the Investigating Agency and attend the respondent No.1- Police Station as and when summoned, till filing of the charge-sheet.

The Criminal Appeal is allowed in the above terms.

Criminal Application No.1229/2018.

In view of disposal of the Criminal Appeal, this application praying for grant of time to file certified copy of order dated 03.12.2018 does not survive. It is disposed of accordingly.

JUDGE

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