

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL APPEAL NO.312 OF 2021

DIGAMBAR PRABHAKAR ITHAPE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Advocate for Appellant : Mr Nilesh S. Ghanekar
APP for Respondent No.1-State – Mr G.O. Wattamwar
Advocate for Respondent No.2 : Mr P.M. Hiwale

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 23rd SEPTEMBER, 2021

PER COURT :

1. Being aggrieved by the order passed by the Additional Sessions Judge, Aurangabad dated 29.04.2021 in Bail Application No. 12/2021 in connection with Crime No. 0259/2020 registered with MIDC Waluj Police Station, Dist. Aurangabad for the offences punishable under sections 363, 366(A), 376 of the Indian Penal Code, Under Sections 3, 4 and 12 of The Protection of Children from Sexual Offences Act, 2012 and Under Section 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant/accused has preferred this appeal under section 14A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. On the basis of the complaint lodged by respondent No. 2, the aforesaid crime came to be registered against the unknown person. However, during the course of investigation, it has been revealed that the appellant has kidnapped the victim, who is minor and committed rape on her.

3. The learned counsel for the appellant/accused submits that the victim has given her statement to the Police on 10.12.2020. She has stated in her Police statement that on 23.05.2020 at about 11.45 p.m. she left her parents house on her own and joined the company of the appellant/accused. Thereafter, she stayed with the appellant/accused at various places. Even she got conceived and carrying six months pregnancy at the time of her statement. She has further stated in her statement that there was love affair between them and that she was not forced or kidnapped by the appellant/accused. Further, she has declined to return to the parents house and also refused for medical examination. The learned counsel for the appellant submits that so far as the age of the victim is concerned, there is only evidence in the form of extract of the admission register. The victim was admitted in the said school in 9th standard and on the basis of the earlier school leaving certificate, those entries about the date of birth have been taken. The learned counsel submits that the Investigating Officer has not collected the birth certificate nor the certificate from her school where she took the education from 1st standard to 8th standard. The learned counsel submits that the prosecution has not satisfactorily demonstrated that the victim was minor at the time of alleged offence. The learned counsel submits that the appellant is in jail since 10th December, 2020. The appellant is ready to abide the conditions if imposed by this Court including the condition that as not to enter within the limits of Aurangabad City except to attending the court dates till the completion of the trial.

4. The learned counsel for respondent No. 2 submits that the victim is presently staying with respondent No. 2. She had delivered a male baby which has been given to the orphan society. The learned counsel submits that respondent No. 2 has not taken decision about the future course of action and even no decision has been taken about performing of the marriage of the victim with any other person. The learned counsel submits that if the appellant/accused is released on bail, there is strong possibility of tampering the prosecution evidence since the appellant/accused resides in the same locality where respondent No.2/informant along with victim reside.

5. The learned APP submits that there is a prima facie evidence that victim was minor at the time of alleged incident, and as such, her consent in any form is immaterial. The learned A.P.P submits that the victim and the appellant/accused found together during the course of investigation and they were brought by the Police by effecting the arrest of the appellant/accused. The learned A.P.P. submits that the D.N.A. report also confirms that the appellant/accused is the biological father of the male baby. The appellant may not be released on bail.

6. We have carefully gone through the charge sheet, particularly the statement of the victim. The victim has stated in her statement that on her own, she left the house of her parents and thereafter, she joined the company of the appellant/accused. There was love affair between them. The victim voluntarily joined the company of the appellant/accused and further she travelled with him at various places and even stayed at place

till they were found by the Police. The victim has left her parents house on 23rd May, 2020 and they were found together in the month of December, 2020. The victim has also refused for her medical examination. She has further stated in her statement itself that she has no complaint against the appellant/accused. Furthermore , she has refused to go to her parents house. She was kept in remand home for some time. Thereafter, she went to her parents house. The victim has delivered the male baby which is now given to orphan society.

7. So far as the age of the victim is concerned, it appears that the investigating agency has not collected the basic documents to substantiate the prosecution case that the victim as on the date of incident was minor. However, it is for the trial court to appreciate the same during the course of the trial. But considering the nature of allegations and further the peculiar facts of this case, we are inclined to release the appellant/accused on bail with certain conditions. It would be just and appropriate if the entry of the appellant/accused is restricted so far as the city limits of Aurangabad, till the trial is over with certain other conditions. Hence, the following order :-

ORDER

- (I) The Criminal Appeal is hereby allowed.
- (II) The appellant/accused namely, Digambar s/o Prabhakar Ithape be released on bail in connection with the Crime No. 0259/2020 (Special case No. 50/2021) registered with MIDC Waluj Police

Station, Dist. Aurangabad for the offences punishable under sections 363, 366(A), 376 of IPC, Under Sections 3, 4 and 12 of The Protection of Children from Sexual Offences Act, 2012 and under section 3(2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing personal bond of Rs. 20,000/- (Rupees Twenty Thousand) with one solvent surety of like amount on the following conditions :-

- (i) The appellant/accused shall not tamper with the prosecution evidence in any manner.
- (ii) The appellant/accused shall not enter within the limits of Aurangabad City till the trial is over except attending the court dates.
- (iii) The appellant/accused shall not make any attempt to contact or communicate the victim in any manner till the trial is over.

III. The Criminal Appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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