

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****CRIMINAL APPEAL NO. 20 OF 2021**

APPELLANT :-
(In Jail)

Dhanraj Ganpat Kuttarmare, Aged about 32 years, Occ. Labour, R/o. Ward No.3, At Maloda, Post Ambhora (Khurd), Ambhorakala, Tah. Kuhi, District Nagpur.

...VERSUS...

RESPONDENTS :-

1] State of Maharashtra, through Police Station Officer, Police Station, Veltur, Tah. Kuhi, District Nagpur.

2] Ku.Prachi Sheshrao Meshram, Aged 21 years, R/o. Maloda, Tah.Kuhi, District Nagpur.

Mr. Raju Kadu, Advocate for the appellant.
Mr. S.D.Shirpurkar, A.P.P for the respondent No.1.
None for the respondent No.2.

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

DATED : 31.03.2021.

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

1. Heard.

2. **ADMIT.**

3. This is an appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

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Act, 1989 challenging the order dated 03/09/2020 passed by the Additional Sessions Judge-11, Nagpur in Miscellaneous Criminal Application No.2059 of 2020 for the offences punishable under sections 376(1) and 506 read with section 34 of the Indian Penal Code and section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The First Information Report came to be registered against the appellant with the accusations that on 06/03/2020 at 1.00 am in the morning, the respondent No.2 went out of her house to ease herself. The appellant, who already had inimical terms with the family of the respondent No.2, came near her and gagged her mouth. It is alleged that the appellant took out one bottle and threatened the respondent No.2 to kill her, as there was poison in the bottle. It is further alleged that the appellant thereafter removed clothes of the respondent No.2 and committed forcible sexual intercourse with her and ran away. The First Information Report was, therefore, filed on 06/03/2020. The appellant was arrested on 06/03/2020 itself. The appellant therefore, filed an application under section 439 of the Code of Criminal Procedure seeking regular bail in relation to Crime No.59 of 2020. The learned Sessions Judge by the impugned order rejected Miscellaneous Criminal Application No.2059 of 2020. The appellant has, therefore, filed the present appeal challenging the order dated 03/09/2020.

5. This Court on 13/01/2021 issued notice to the respondents and granted provisional bail to the appellant. The respondent No.1 filed reply contesting the application under section 439 of the Code of Criminal Procedure. It is stated that there is sufficient evidence available with the prosecution to establish the guilt of the appellant in the crime alleged against the appellant. It is stated that the appellant may misuse the liberty granted to him if he is released on bail.

6. The respondent No.2 though served with notice of appeal, has neither appeared personally, nor through an Advocate in the present appeal.

7. We have carefully considered the impugned order passed by the learned Sessions Judge and material submitted in the form of charge-sheet. On careful consideration of material available on record, it appears that the appellant-accused is aged about 32 years and the respondent No.2-victim is aged about 21 years. The medical examination report does not show any injuries over the person of victim, except on genitals though it is alleged that the appellant forcibly committed sexual intercourse with the respondent No.2. The charge-sheet is already filed. The investigation is complete. The appellant has stated that there are no criminal antecedents against the appellant to his discredit. After the release of the appellant on provisional bail on

13/01/2021, it is not pointed by the learned A.P.P. that the appellant has misused the liberty granted to him.

8. We, therefore, pass the following order:

- i) The impugned order dated 03/09/2020 passed by the learned Additional Sessions Judge-11, Nagpur in Miscellaneous Criminal Application No.2059 of 2020 is quashed and set aside.
- ii) The order granting provisional bail dated 13/01/2021 is hereby confirmed, subject to the same conditions stated in the said order.

8. The criminal appeal is allowed in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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