

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

CRIMINAL APPEAL NO.35 OF 2021.

Sachin Narendra Gotmare,
Aged about 39 Years, Occ.: Labourer,
R/o. Post Ghorad, Tq. Kalmeshwar,
Dist., Nagpur. **APPELLANT**

----- **VERSUS** -----

1. State of Maharashtra,
Through P. S. O. Kalmeshwar,
Distt. : Nagpur.
2. Sugantibai Shivkumar Tekam,
Age about : 39 years,
R/o. C/o. Manoj Golawar,
Ghorad, Tah : Kalmeshwar,
Distt. : Nagpur.
- 2A. Sumanlal S/o. Hajari Kajle,
Aged about : 35 years,
Occu. : Labourer,
R/o. C/o.: Ashok Patle, Ubali,
Kalmeshwar, Distt : Nagpur. **RESPONDENTS**

Shri S. A. Chaudhari, Advocate for the Appellant.
Shri T. A. Mirza, A.P.P for the Respondent No.1/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 16.07.2021.

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 passed by the Additional Sessions Judge – 11, Nagpur in Miscellaneous Criminal Application No.1663/2020 dated 19.08.2020 arising out of the First Information Report No.769/2018 under Sections 376-D, 452, 324, 294 and 34 of the Indian Penal Code read with Sections 3(2)(va), 3(1)(w)(i)(ii), 3(2)(v) 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 and others with the accusations that on 16.10.2018 when the victim was in her house at about 8.00 p.m., the appellant along with another co-accused entered the house of the victim and committed sexual assault on the victim and abused her in filthy language. When the husband of the victim entered into the house, the co-accused Natthu and the appellant fled away from the spot. The First Information Report was therefore registered against the appellant and another co-accused. The appellant was arrested on 18.10.2018 and Charge-Sheet was filed on 26.12.2018.

5. The appellant filed application under Section 439 of the Code of Criminal Procedure which is rejected by the impugned order dated 19.08.2020. The appellant has therefore filed the present appeal. This Court on 15.01.2021 issued notice to the

respondents by condoning the delay and released the appellant on provisional bail.

6. The Investigating Agency in pursuance of the notice has filed reply and stated that there is strong *prima facie* case against the appellant and there is possibility of commission of similar crime by the appellant if he is released on bail. The respondent No.2 has filed her reply and opposed grant of bail to the appellant.

7. We have carefully considered the allegations in the First Information Report and the material brought on record in the form of Charge-Sheet. The learned Advocate for the appellant has placed on record copy of order of this Court in Criminal Appeal No.452/2020 granting bail to co-accused in the crime.

8. Shri T. A. Mirza, learned Additional Public Prosecutor appearing for respondent No.1/State has not disputed that the role attributed to the appellant in Criminal Appeal No.452/2020 is similar to the role of appellant in the present appeal. Therefore, on the ground of parity, the appellant deserves to be released on bail. Even otherwise also, this Court by order dated 15.01.2021 had granted provisional bail to the appellant. The respondents have not brought on record any material that the appellant has misused liberty granted to him by the order of provisional bail.

9. We therefore, pass the following order.

i. The impugned order dated 19.08.2020 passed by the Additional Sessions Judge – 11, Nagpur in Miscellaneous Criminal Application No.1663/2020 is quashed and set aside.

ii. The order of release of appellant on provisional bail dated 15.01.2021 is confirmed on the same terms and conditions.

The appeal is allowed in the above terms.

JUDGE

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