

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

CRIMINAL APPEAL NO. 322 OF 2020

Vishal S/o. Sunil Tayde (Jail),
Age 24 years, Occupation : Laborer,
R/o. Lohari Road, Akot, Tq. Akot,
Akola.

.... **APPELLANT.**

// **VERSUS** //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Akola City,
Akot, District : Akola.
2. Ku. Trupti daughter of Bhagwant Raut,
Aged 17 years, Occupation : Education,
through her natural guardian her Mother
Sindhu Bhagwan Raut, age 37, occupation
Labor,
All R/o. Ahilyabae holkar Nagar Lohari
Road, Akot, Taluka : Akot, District : Akola,
Mobile No. 9975244345.

.... **RESPONDENTS.**

Shri Ajay Londhe, Advocate for Appellant.
Shri T.A.Mirza, A.P.P for Respondent No.1/State.
Shri D.V.Mahajan, Advocate for Respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : JANUARY 15, 2021.

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

1. Heard.

2. This is an appeal filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging the order dated 18th October 2019 passed by Additional Sessions Judge, Akot in Misc. Criminal Application No.238 of 2019.

3. The First Information Report vide Crime No.80 of 2019 for commission the offences punishable under Sections 363, 366(A), 376(2)(n), 417 of the Indian Penal Code, Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(W)(i)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 came to be registered against the appellant with the accusation that the daughter of the informant was missing from 18th February 2019. During the investigation it is revealed that the appellant had taken the victim to Akot and had committed forcible sexual intercourse with her repeatedly. It is also stated in the reply that the victim was minor at the time of the incident. The appellant was arrested on 31st July 2019. The appellant, therefore, moved learned Additional Sessions Judge, Akot with an application under Section 439 of the Code of Criminal Procedure. The application was rejected by the impugned order dated 18th October 2019. The appellant has therefore, filed present appeal.

4. This Court on 21st July 2020 issued notice to the respondent No.2. The respondent No.2 has appeared through Shri D.V.Mahajan, Advocate. Shri Mahajan submitted that he has no instructions from his client. He submitted that he intends to issue notice for withdrawal of his power from the matter for want of instructions.

5. We have considered the contents of the First Information Report and the material produced by the prosecution in the form of charge-sheet. From the material produced on record, *prima-facie*, it appears that the victim was aged about 16 years on the date of the incident. The investigation is complete and the charge-sheet is filed. The prosecution has not been able to point out that custody of the appellant is required for further investigation. It is not pointed out by the prosecution that the appellant has misused the liberty granted to him by this Court vide order dated 21st July 2020. The appellant, in the application filed before the trial Court in paragraph No.1, has stated that the appellant has no criminal antecedents.

6. We, therefore, pass the following order:

- i) The impugned order dated 18th October 2019 passed by Additional Sessions Judge, Akot in Misc.Criminal Application No.238 of 2019 is quashed and set aside.

- ii) The order dated 21st July 2020, granting provisional bail to the appellant, is hereby confirmed subject to additional condition that the appellant shall attend each and every date before the Sessions Court unless granted exemption by the learned Sessions Judge.

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

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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