

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

CRIMINAL APPEAL NO. 293 OF 2021.

Satish @ Kannya S/o. Tikamchand Badnakhe,
Aged about 60 years, Occ.: Tailor,
R/o. Dharni, Tq. Dharni, Dist. Amravati. **APPELLANT**
(IN JAIL)

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

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Dharni,
Tq. Dharni, Dist. : Amravati.
2. Vishal S/o. Surendra Jawarkar,
Minor, through his natural guardian mother
Sau. Sunita Wd/o. Surendra Jawarkar,
Aged about 35 years,
R/o. Ward No.4, Near Government Well,
Dharni, Tq. Dharni, Dist. Amravati. **RESPONDENTS**

Shri Anil Mardikar, Senior Advocate with Shri Rishabh Khemuka,
Advocate for the Appellant.
Shri V. A. Thakare, A.P.P. for the Respondent No.1/State.

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

DATE : 12.08.2021.

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 dated 19.10.2020 passed by the learned Additional Sessions Judge – 1, Achalpur in Criminal Bail Application No.648/2020.

4. The First Information Report came to be registered against the appellant with the accusations that on 15.10.2019, the respondent No.2 lodged report with the respondent No.1 – Police Station alleging that the appellant had unnatural sexual intercourse with the respondent No.2 and gave amount of Rs.200/- to the victim. It is alleged that again on 27.09.2019, the appellant called the respondent No.2 and took him to the same place and again had unnatural sexual intercourse with him. On 15.10.2019 the appellant again committed unnatural sexual intercourse with the respondent No.2.

5. The appellant initially filed Bail Application No. 671/2019 under Section 439 of the Code of Criminal Procedure, which was rejected by the learned Additional Sessions Judge, Achalpur. The appellant therefore, approached this Court by way of filing Criminal Appeal No.135/2020. This Court dismissed the Criminal Appeal filed by the present appellant on merits by detailed judgment and order dated 05.06.2020.

6. The appellant thereafter, again filed Criminal Bail Application No.648/2020 before the learned Additional Sessions

Judge-1, Achalpur. The learned Additional Sessions Judge-1, Achalpur by impugned order dated 19.10.2020 rejected the bail application of the appellant. The appellant has therefore, filed the present appeal.

7. This Court on 26.07.2021 recorded the submission of the appellant that the appellant is allegedly suffering from HIV and his health condition is worsening day by day. This Court therefore, directed the Superintendent of Amravati Correctional Home to examine physical condition of the appellant through either the jail hospital or nearby civil hospital and submit report to this Court.

8. The Medical Officer Dr. Milind Sitaram Gavai has filed an affidavit dated 03.08.2021. It is stated in the affidavit that he has examined the appellant thoroughly and perused his papers. He annexed the copy of the report card as per direction of National AIDS Control Organization. It is stated in the affidavit that the appellant is receiving Antiretroviral Therapy as per guidelines of National AIDS Control Organization (NACO) and he is Asymptomatic and is having good health and nutritious diet is also given to him regularly. It is stated that at present health condition of the appellant is stable.

9. Since this Court had already rejected the bail application of the appellant earlier and there is no change in

circumstances except the allegation that the appellant is suffering from HIV disease. In view of the affidavit filed by Dr. Milind Sitaram Gavai, it appears that the condition of the appellant is stable and he is asymptomatic patient. Since the health condition of the appellant is stable, there is no change in circumstance after the rejection of the appeal filed by the appellant. This Court while dismissing the Criminal Appeal No.432/2020, has considered merits and has dismissed the appeal by giving detailed reason. Therefore in absence of change in circumstance, the rejection of the second bail application by the learned Sessions Judge by way of impugned order is perfectly legal. There is no illegality in the impugned order.

10. The Criminal Appeal is therefore, dismissed.

11. In view of dismissal of main appeal, pending Criminal Application (APPA) No.399/2021 does not survive and the same stands disposed of accordingly.

JUDGE

JUDGE