

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

CRIMINAL APPEAL NO. 662 OF 2019

Ishwar @ Vikki S/o. Shriram Tarale,
Aged about 23 years, Occ : Labour,
R/o. Kaotha Bahaddura, Tq.Balapur,
Dist. Akola.

.... **APPELLANT.**

// **VERSUS** //

1. State of Maharashtra,
through its Police Station Officer,
Dabki Road Police Station, Akola,
District : Akola.
2. Shivram Ukarda Khandare,
Age about 78 years, Occu. : Retired,
R/o. Bhim Nagar, Old City,
PS. Dabki Road, Akola,
Tq. And Dist. Akola.

.... **RESPONDENTS.**

Shri N.R.Tekade, Advocate for Appellant.
Ms Mayuri Deshmukh, A.P.P. for Respondent No.1/State.
None for Respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : JANUARY 06, 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) Act, 1989 challenging the order dated 4th September 2019 passed by Special Judge, Akola in Misc. Criminal Application No.577 of 2019 in connection with First Information Report No.186 of 2019 lodged on 2nd June 2019 in respect of the offences punishable under Sections 363 and 376(2)(n) of the Indian Penal Code read with Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 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 on 2nd June 2019. The appellant was arrested on 21st June 2019. The appellant, therefore, filed first bail application which was rejected. Thereafter the appellant filed second bail application which is rejected by the impugned order. The appellant has, therefore, filed the present appeal. This Court, on 3rd October 2019, issued notice to the respondents and granted provisional bail to the appellant subject to condition stated in the said order.

5. Ms Mayuri Deshmukh learned A.P.P. stated that the respondent No.2 has been served with the notice of the Court on 12th October 2019 and 17th October 2019. The respondent No.2 has not appeared before this Court in spite of service either personally or through Advocate.

6. With the assistance of the learned Advocates for the parties, we have examined the contents of the First Information Report and the impugned order. The accusations against the appellant are that the appellant was in physical relationship with the victim against her wish. The appellant is aged about 23 years and the victim is aged about 16 years. The record shows that initially the victim refused to undergo medical examination. The appellant, in paragraph No.2, has stated that there are no criminal antecedents to his discredit. The appellant was in jail from 14th June 2019 till the protection granted by this Court on 3rd October 2019. The prosecution has not pointed out that the appellant has misused the liberty granted to him by order dated 3rd October 2019. Charge-sheet is filed. The investigation is complete. The prosecution has not been able to point out that custodial interrogation of the appellant is necessary.

7. We, therefore, pass the following order:

- i) The impugned order dated 4th September 2019 passed by learned Special Judge, Akola in Misc. Criminal Application No.577 of 2019 is quashed and set aside.
- ii) The order dated 3rd October 2019 granting provisional bail is confirmed subject to same conditions stated in the said order

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

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)