

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.505 OF 2022

Abhishek s/o. Tatyasaheb Somvate	..Appellant
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.V.V.Deshmukh, Advocate h/f. Mr.S.B.Bhosale, Advocate for appellant

Mr.A.M.Phule, APP for respondent no.1

Mr.H.I.Pathan, Advocate h/f. Mr.R.R.Kale, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
R.M.JOSHI, JJ.**

DATE : NOVEMBER 11, 2022

ORDER :-

This is an appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Act of 1989", for short). The challenge in this appeal is to the order dated 25.05.2022 below Exh.03 in Special (POCSO) Case No.28 of 2022, rejecting the appellant's application for bail in connection with Crime No.038 of 2022 registered with Veergaon Police Station, Dist. Aurangabad, for the offences punishable under Sections 376, 376(4) (3) and 506 of Indian Penal Code and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act and Sections 3(2)(w) (ii) and 3(2)(va) of the Act of 1989

2. The First Information Report (FIR) was lodged by the victim herself on 09.03.2022. She claimed to be of 14 years of age. The appellant is her next door neighbour. It is her case that about four months before 09.03.2022, she had been to a field outside the village for fetching firewood. The appellant came from behind. He pressed her mouth and took her to a nearby sugarcane field. The appellant then committed rape of her. He also gave threats to her life, if she went public. It is her further case that the appellant, thereafter, continued to sexually exploit her under one or the other pretext. He had even promised to marry her. The informant conceived. She experienced pains. Her grandmother, therefore, took her to a dispensary. It was then realised that she was pregnant of four months. The appellant, therefore, came to be arrested. On investigation, charge sheet has been filed.

3. Learned counsel for the appellant would submit that the appellant was just little over 18 years of age at the material time. There is no concrete evidence about the age of the victim. Aadhar Card indicates that the victim was little over 15 years of age. The Birth Certificate indicates her age as 14 years. According to learned counsel, it would take time for commencement and conclusion of the

trial. In the facts and circumstances of the case, the trial Court should have allowed the application for bail.

4. Learned APP and learned counsel appearing for the informant would, on the other hand, submit that the victim was below 18 years of age. Her consent was, therefore, immaterial. She even conceived. The offence is serious one. The trial Court has rightly turned down the application of the appellant for bail. Learned counsel, therefore, urged for rejection of the application.

5. Reading between the lines suggests that it was a consensual relationship. The appellant is next door neighbour of the informant/victim. She conceived. It is now known as to why the Investigating Officer, so far, has not obtained sample for DNA profiling. For the present, the case against the appellant would be based on the allegations made against him in the FIR.

6. The appellant is just little over 18 years of age. It will necessarily take time for commencement and conclusion of trial. In this factual backdrop, we are inclined to allow the appeal. Hence, the order:-

(i) The appeal is allowed.

(ii) The order dated 25.05.2022 below Exh.03 in Special (POCSO) Case No.28 of 2022 passed by learned Addl. Sessions Judge-1, Vaiijapur, Dist. Aurangabad, is set aside.

(iii) The appellant be released on bail in connection with Crime No.038 of 2022 registered with Veergaon Police Station, Dist. Aurangabad, for the offences punishable under Sections 376, 376(4) (3) and 506 of Indian Penal Code and Sections 4, 8, 12 of the Protection of Children from Sexual Offences Act and Sections 3(2) (w)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iv) The appellant shall not tamper with the prosecution evidence.

(v) He shall not enter the village Mahalgaon Bajartal, Tq. Vaiijapur, Dist. Aurangabad, until conclusion of the trial.

[R. M. JOSHI, J.]

[R.G. AVACHAT, J.]

KBP