

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 312 OF 2022**

Rohan Dattatray Bhosale. ... Appellant.

V/s.

The State of Maharashtra & anr. ... Respondents.

Ms. Manisha Devkar a/w. Mr. Shankar Katkar, advocate for appellant.

Ms. P.P. Shinde, APP for State.

Ms. Shraddha Sawant, Advocate appointed for respondent No. 2.

**CORAM : SMT. SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

DATE : APRIL 22 2022.

P.C.

1 Heard the learned Counsel for the appellant, learned APP
for respondent-State and the learned Counsel for the respondent No. 2.

2 This is an appeal under section 14A of the Scheduled Caste
and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant
herein is arrested in Crime No. 355 of 2021 registered at Velapur Police
Station for the offence punishable under section 376, 366A, 506 of the
Indian Penal Code, section 3(1)(w)(i), 3(1)(w)(ii), 3(2)Va, 3(2)V of SC &
ST (Prevention of Atrocities) Act, Section 4, 8, 10 and 17 of the

Protection of Children from Sexual Offences Act, 2012.

3 It is the case of the prosecution that on 31st October, 2021 one Mrs. Londhe lodged a report at Velapur Police Station alleging therein that she is into the business of trading sarees. On 30th October, 2021, she had left her house at about 10.30 a.m. to purchase sarees from Pandharpur. Her daughter Ms. X, son Laxman and his wife Rupali from her family were at home. She returned home at about 4.00 p.m. On 31st October, 2021 she realised that her daughter was in a disturbed state of mind and upon enquiry the daughter disclosed that on 30th October, 2021, she had been to Civil Hospital to bring cotton and at that time, one Yuvraj Godase, Ranjit Kolekar and one unknown person were standing near Civil Hospital. When she was passing by, she was accosted and taken to a nearby building under construction. There Yuvraj Godase attempted to ravish her. She attempted and tried to flee from the clutches of Yuvraj but at that time, the unknown person and Ranjit were standing guard and they pushed her inside towards Yuvraj and thereafter, Yuvraj had ravished her. The case against the present appellant is that he had facilitated the act committed by Yuvraj by pushing the victim inside when she was trying to rescue and flee from the clutches of Yuvraj. According

to the prosecution, the unknown person was the present appellant.

4 The present appellant was arrested on 1st November, 2021. His photograph was taken at the time of his arrest and the same was affixed on his arrest panchanama.

5 On 10/12/2021, the victim is alleged to have identified the present appellant as the unknown person who was standing guard. The act attributed to the present appellant is that of facilitating the offence punishable under section 376 of the Indian Penal Code. The learned Counsel for the appellant has shown to the Court the WhatsApp chat record between the principal accused Yuvraj and the victim, which clearly indicate that the victim and the principal accused used to chat with each other regularly for long hours and knew each other. The appellant herein happens to be the resident of Khandali. He is studying in Government Industrial Training Institute at Akluj(Khandali), district Solapur. The learned counsel has further submitted that in fact, on the date of the incident, the present appellant was not present. However, by showing the photograph which was affixed on the arrest panchanama, he has been identified by the victim.

6 The investigation is completed and charge-sheet is filed. Learned Counsel for the appellant has demonstrated before the Court from the CDR placed on record that the Cell Phone number of the appellant is 8411840648, which showed that at the relevant time of the incident i.e., on 30th October, 2020 at about 3.00 p.m. he was at village Malkhambhi. The appellant has been in custody from 1st November, 2021. His further incarceration is unwarranted in the given facts of the case and hence, the appellant deserves to be enlarged on bail.

7 This Court had appointed Advocate Ms. Shraddha Sawant to espouse the cause of the complainant. She has vehemently stated before the Court that taking into consideration the minority of the victim, even if she has any relationship with the principal accused, the consent cannot be taken into consideration. It is further urged that the appellant seems to have facilitated the act.

8 The learned APP Ms. P.P. Shinde submitted that the documents shown by the appellant did not form part of the charge-sheet and the same cannot be relied upon. This submission cannot be taken into consideration for the simple reason that it is the duty of the investigating officer DYSP to take into consideration all aspects of the

case and make a fair investigation. In view of the above, following order is passed :

ORDER

- (i) Criminal Appeal is allowed.
- (ii) The appellant Rohan Dattatray Bhosale in Crime No. 355 of 2021 registered at Velapur Police Station be enlarged on bail on furnishing P.R. bond in the sum of Rs. 15,000/- and one or more solvent sureties in the like amount.
- (iii) The appellant shall cooperate with the investigating agency and report to the investigating officer as and when called.
- (iv) Learned Counsel Ms. Shraddha Sawant has espoused the cause of the victim to the best of her capacity and hence, she is entitled to professional fees in accordance with law.
- (v) Criminal Appeal is disposed of accordingly.

(MILIND N. JADHAV, J)

(SMT. SADHANA S. JADHAV, J)