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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 973 OF 2022**

**Hitesh Santosh Vartak,**

Age : 26 years, occ.: Nil,

Residing at Ganesh Nagar,

Phanasadongari, Talula Pen,

District Raigad.

(At present Raigad District Prison,

District Raigad)

**.. Appellant**

(Ori. Accused)

**Versus**

**1. The State of Maharashtra,**

(At the instance of Pen Police Station,

District Raigad vide C.R.No.133 of 2022)

**2. XYZ,**

Age : 20 years, Occ.: Household,

Residing at Phanasadongari,

Golibar Maidan, Gokulnagar,

Pen, Taluka Pen, District Raigad.

**.. Respondents**

Mr. Sachin H. Deokar, Advocate for the Appellant.

Mr. Ajay Patil, APP for Respondent - State.

**CORAM : A.S. GADKARI &  
MILIND N. JADHAV, JJ.**

**DATE : 18 October 2022.**

**JUDGMENT (PER : MILIND N. JADHAV, J.)**

. This Appeal is filed under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “**Atrocities Act**”) to challenge the Order dated 29.08.2022 passed by the learned Additional Sessions Judge, Alibag-Raigad (for short

“**Trial Court**”) rejecting the Criminal Bail Application of Appellant in a case registered under Section 376 of the Indian Penal Code, 1860 (for short “**IPC**”) and under Sections (3)(1)(w)(i), 3(2)(v) of the Atrocities Act with Pen Police Station, Raigad vide C.R. No.133 of 2022.

2. Shorn of unnecessary details, the prosecution case is as under:-

2.1. That when victim was alone in the house Appellant came there alongwith his friend and entered in the house. He held her hand, the victim pulled it back and ran inside the house and Appellant followed her and took her into the bathroom. He tied both her hands with handkerchief and ravished her. Meanwhile the elder sister of the victim came home. The door of the house was open so she came inside and looked for the victim. Since the door of the bathroom was closed, she pushed the door and saw the victim and Appellant together. Seeing her sister the victim and Appellant put on their clothes. The sister slapped the Appellant and he asked her to forgive him by admitting his mistake and fled away. On the report of victim police registered the present crime and Appellant was arrested.

3. It is seen from the record that, investigation of the present case is completed and chargesheet has been filed on 12.08.2022. Incident occurred on 18.06.2022. Investigating Officer (IO) has recorded the statements of witnesses under Section 161 of the Code of

Criminal Procedure, 1973 (for short “**Cr.P.C.**”) which include the statements of Naresh Kende (who accompanied Appellant on the date and time of incident), the prosecutrix and her elder sister Dipti Yadav. We have perused the statements of witnesses as recorded by the IO.

4. We have heard Mr. Deokar, learned Advocate for Appellant and Mr. Ajay Patil, learned APP at length and with their able assistance perused the record.

5. Mr. Deokar would argue that a case under Section 376 IPC is not made out since there is a possibility of a love affair between the prosecutrix and Appellant and the relationship was consensual. That there was no injury caused to the prosecutrix during the act. That she herself opened the door and let the Appellant inside her house and most importantly both of them were acquainted with each other prior to the incident as the prosecutrix’s family had rented the Appellant’s premises earlier. He has therefore prayed for enlargement on bail.

6. It is seen that Appellant is 35 years old whereas the prosecutrix is 20 years old. In her statement before the police and the Magistrate under Section 164 Cr.P.C., prosecutrix has clearly stated that she did not consent for having sexual relation with the Appellant. She has further stated that Appellant tied both her hands with handkerchief and forced him on her. Statement of Dipti Yadav, eyewitness and elder sister of the prosecutrix is relevant and

important. She has stated that she opened the bathroom door and found both of them inside without any clothes. That the prosecutrix immediately informed her that Appellant had forcibly assaulted her sexually. That she immediately slapped the Appellant thereafter. This shows presence of Appellant at the incident spot. Corroboration is further found in the statement given by Naresh Kende, the friend of Appellant who has stated that he alongwith Appellant went to the prosecutrix's house; that he sat outside and the Appellant was inside the bathroom alongwith the prosecutrix. This statement also proves presence of the Appellant at the incident spot.

7. Learned APP has placed before us copy of Order dated 05.11.2019 passed by Judicial Magistrate First Class, 3<sup>rd</sup> Court, Pen acquitting Appellant of the charges under Section 354D read with 506 IPC in an incident pertaining to 17.03.2019, wherein Appellant was involved in a molestation case. He has also placed on record copy of Order dated 19.09.2017 passed by II<sup>nd</sup> Joint JMFC, Pen acquitting Appellant of charges alongwith 6 others, under Sections 143, 147, 323, 504, 506 read with 149 IPC and Sections 37(a)(3) and 135 of the Bombay Police Act, 1951. We have taken note of the above Orders.

8. *Prima facie*, at this stage there is consistency in the statements of the prosecutrix and the witnesses regarding the coercive sexual assault on the prosecutrix by the Appellant. Considering the

nature of the crime and background of the accused, we are of the opinion that no case of grant of bail has been made out by the Appellant. Also the antecedents of Appellant clearly show his propensity towards committing crime against women and hence if released on bail, he may tamper the prosecution evidence. The nature of crime been indeed serious, Appellant cannot be released on bail.

9. We agree with the reasoned Order dated 29.08.2022 passed by the learned Trial Court and do not find any scope for interference therein. The said Order has been correctly passed in the facts and circumstances of the present case.

In view of the above discussion and findings, Criminal Appeal is dismissed.

[ MILIND N. JADHAV, J. ]

[ A.S. GADKARI, J.]

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