

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

CRIMINAL APPEAL NO. 220 OF 2022.

Sheikh Yusuf Sheikh Yakub,
Age : 35 years, Occupation : Brick Kiln,
R/o. Bedkipura, Talao Fail,
Taluka & District : Yavatmal

.... **APPELLANT**
(In Jail)

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

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Yavatmal (City).

2. XYZ (VICTIM),
Crime No. 580/2021,
Police Station Officer,
Police Station, Yavatmal (City),
Tal. & Dist. Yavatmal.

.... **RESPONDENTS**

Shri P. W. Mirza, Advocate for the Appellant.

Shri Amit Chutke, A.P.P. for the Respondent No.1/State.

Ms Mukta R. Kavimandan, Advocate (Appointed) for Respondent No.2.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.

DATE : 11.10.2022.

ORAL JUDGMENT : [PER : VINAY JOSHI, J.]

1. Heard.

2. **ADMIT.** Heard finally by consent of both learned
Counsel appearing for the parties.

3. This is an appeal under Section 14-A of the
Schedule Castes and the Scheduled Tribes (Prevention of
Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities

Act, 1989) challenging the order dated 02.03.2022 of the Sessions Court by which regular bail of the appellant has been rejected.

4. The facts in brief are that the police have registered crime at the instance of report dated 13.07.2021 lodged by victim aged 27 years. It is her contention that she was working as a labourer on a Brick Kiln owned by the appellant/accused. She has an acquaintance with the accused which was turned into a love relationship. It is alleged that the accused promised her for marriage and had maintained sexual relations from the year 2015 to 2021. On 08.07.2021, when she insisted for marriage, the accused abused her and flatly denied, for which she had lodged the report.

5. The appellant/accused came to be arrested on 14.09.2021 since his urge for pre-arrest bail was rejected. After custodial interrogation, he is in jail till date. The accused had applied for regular bail in terms of Section 439 of the Code of Criminal Procedure. However, the Trial Court declined to exercise discretion in his favour. Thus, by way of appeal, the accused is seeking for regular bail in connection with Crime No.580/2021 registered with the Police Station Yavatmal (City) for the offence punishable under Sections 376,

376(2)(n) and 506 of the Indian Penal Code and Section 3(2)(va) of the Atrocities Act, 1989.

6. It is primely argued that though it is assumed that there was sexual relations, however, it was consensual one. The victim is major aged 27 years, knowing fully well the consequences of the act. The marriage of accused was well within the knowledge of the victim, still she maintained the relations. These submissions were made in the alternative form by essentially denying the occurrence as alleged.

7. The learned Counsel appearing for the appellant has pointed out that the Trial Court seriously erred in rejecting the bail by taking into account totally irrelevant considerations. He took me through paragraph No. 6 of the impugned order to contend that the Trial Court has weighed some material which was not related to this case. We have minutely gone through the said portion wherein it has been stated that victim was compelled to marry as well as she was forced for abortion. The other side has conceded the position that it is not the case of present victim.

8. The investigation is complete and charge-sheet has been filed. The accused is in jail from last 13 months. There are no specific allegations about use of force of compulsion.

Though the prosecution has invoked the provisions of the Atrocities Act, 1989 however neither Caste Certificate is produced nor it has been specifically referred in the First Information Report.

9. The Learned Counsel appearing for respondent No.2 – Victim while resisting the bail has submitted that the relatives of the accused are pressurizing the victim for withdrawal of the complaint. For that purpose she has attracted my attention to one N.C. Report dated 13.05.2022 and few letters sent by the victim to this Court. As per N.C. Report, the relatives of victim have allegedly pressurized her on account that the accused was not being released on bail.

10. Having regard to the overall facts, it reveals that the victim is a major. There was no grievance for initial 7 years. By the time, the investigation is complete, therefore, there is no purpose in keeping the accused behind bars for indefinite period. Certainly to ensure the interest of victim, it would be just to impose certain conditions while releasing the appellant/accused on bail. In view of that the following order :

ORDER

1] The appeal is allowed.

2] The impugned order dated 02.03.2022 passed by the Additional Sessions Judge, Yavatmal in Special Case No.112/2021 is hereby quashed and set aside.

3] The appellant/accused namely Sheikh Yusuf Sheikh Yakub be released on bail on he furnishing P R. Bond of Rs.25000/- (Rs. Twenty Five Thousand Only) with one or two sureties in the like amount.

4] The appellant shall not tamper the prosecution evidence and not to try to contact the prosecution witnesses in any manner.

5] The appellant shall attend the concerned Police Station on first Sunday of each month till the culmination of the trial.

11. The appeal stands disposed off. Pending Criminal Application(s), if any, stand(s) disposed of.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)