

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

CRIMINAL APPEAL NO. 468 OF 2022

Priti w/o Manish Warjurkar, Aged about
28 years, Occ. Caterers, R/o Plot No.
101, Gngabai Ghat Road, Bhuteshwar
Nagar, Mahal, Nagpur (In Jail).

... APPELLANTS

VERSUS

1. The State of Maharashtra, through
Police Station Officer, Police Station
Imamwada, Nagpur.
2. XYZ Complainant in Crime
No.335/2019 registered with
Imamwada Police Station, Nagpur.

... RESPONDENT

Shri S.P. Dharmadhikari, Sr. Advocate a/w Shri C.S.
Dharmadhikari, Advocate ad Shri R.A. Bhandakkar, Advocate
for the appellant.
Shri S.M. Ukey, A.P.P. for the respondent no. 1/State.
Smt. Jaya Mishra, Advocate for respondent no. 2 (appointed).

CORAM:VINAY JOSHI AND MRS. VRUSHALI V. JOSHI, JJ.
DATED : 15/11/2022.

ORAL JUDGMENT :

Heard. **ADMIT.**

2. The matter is taken up for final hearing by consent of the learned Counsel appearing for the parties.

3. This is an appeal filed under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (the SC and ST Act) challenging the order dated 05.10.2021 by which the Special Court has rejected the regular bail of the appellant-lady. The appellant was arrested on 23.09.2019 in Crime No.335 of 2019 for the offences punishable under Sections 363, 370, 376, 465, 468, 471 read with Section 34 of the Indian Penal Code, Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, Section 9 and 10 of the Prohibition of Child Marriage Act, 2006 as well as Sections 3(1)(w)(i), 3(2)(va) of the SC and ST Act.

4. The appellant repeatedly applied to the Special Court and this Court for bail, however each time remained unsuccessful. The last order of rejection by the Special Court is under challenge with urge to grant bail.

5. The facts in brief are that, the crime was registered at the

instance of report lodged on 22.09.2019 by the minor victim aged 16 years. It is her contention that she being a poor lady was residing as a maidservant with a person namely Pawan. Due to some differences, she left the house of her master. When she was seated at railway station, the appellant-lady happened to see the victim and after knowing that she is shelter-less took her to the State of Rajasthan. They stayed together for some days and then the appellant arranged victim's marriage with co-accused Sameer. After marriage the victim stayed with her so-called husband Sameer where they had sexual relations. Later on, it was learnt that missing report has been lodged on which the victim was brought back and therefore, she lodged the report. During investigation, it was transpired that the appellant-lady had contracted with bridegroom Sameer for the marriage of victim and accepted Rs.1,70,000/- from him. The Police have recorded statement of witnesses to show that the appellant has managed to fabricate the documents about the age of minor victim so as to pretend she is major. According to the prosecution, the lady is a kingpin of entire episode and thus considering seriousness of the offence, she does not deserve for bail.

6. The State as well as learned Counsel appearing for the victim strongly resisted for bail. It is primely submitted that thrice the

claim of bail was rejected and therefore, in absence of any change in circumstance, appellant cannot revive her claim for bail. On the point of factual aspect it has been argued, that the appellant is a master mind of entire episode. She has sold the minor victim for consideration and thus played active role. Not only that, to facilitate her act she has fabricated documents about the age of victim. Looking to the seriousness of the offence, bail is prayed to be rejected.

7. The appellant was arrested on 23.09.2019 and since then she is in jail. Co-accused Sameer was arrested, however this Court has released him on bail in Criminal Appeal No.70 of 2020. Third accused namely Dhanraj is reported to be absconding against whom charge-sheet has been filed in terms of Section 299 of the Code of Criminal Procedure. After completion of investigation, final report has been filed on 14.11.2019. The appellant perhaps had applied for bail prior to charge-sheet, which was rejected. Thereafter, on 15.06.2020, the appellant's bail application was rejected by the Trial Court. Since the provisions of the SC and ST Act have been invoked, the appellant has filed Criminal Appeal No.234 of 2020 seeking bail, however this Court has declined to exercise discretion by rejecting the appeal vide order dated 23.09.2020. Surprisingly, the same order of rejection of bail dated 15.06.2020 was once-again challenged before this Court by way

of another Criminal Appeal No. 226 of 2021 which has met the same fate vide order dated 21.06.2021. In such background, the appellant has again applied to the Trial Court for bail which was rejected vide impugned order dated 05.10.2021.

8. While rejecting the second bail application after charge-sheet the Trial Court has mainly considered that there was no change in circumstance and thus, in view of seriousness of offence, rejected the bail. Admittedly, first bail application after charge-sheet has been rejected by this Court in Criminal Appeal No. 234 of 2020 by considering merits of the case. Though it was followed by another rejection in Criminal Appeal No. 226 of 2021 however virtually this Court has not dwell upon merits but simply noted that already the same challenge was rejected by this Court and thus, it was second rejection.

9. In the wake of such position, again the matter has come for grant of bail. Learned Senior Counsel appearing for the appellant this time has not argued on merits, but has emphasized the need of release on account on change of circumstance. It is strenuously argued that though charge-sheet has been filed on 14.11.2019, till date the Trial Court has not framed the charges and thus there is no likelihood of

conclusion of trial in near future. He would submit that the prosecution has cited in all 45 witnesses, therefore it would be a long exercise to complete the trial. It is pointed out that the third co-accused is absconding and yet the Trial Court has even not separated the trial. The entire endeavour was to demonstrate that there is no likelihood of even commencement of trial and thus, it is not appropriate to keep the appellant-lady behind bars for indefinite period. Since this Court has declined to grant bail on merits in Criminal Appeal No.234 of 2020 vide order dated 23.09.2020 we are of the view to consider whether there exist change in circumstance, and is in the prevailing situation appellant deserves for use of discretion. Certainly, if we find that the appellant has made out appealable grounds for use of discretion then certainly we would consider the gravity of offence to that extent.

10. Learned A.P.P. has pointed that this Court has rejected first bail after charge-sheet on 23.09.2020 and then on 21.06.2021. It is submitted that within two months second bail application was filed before the Trial Court and thus, it was rightly observed that there is no change in circumstance. Likewise, it is pointed that while rejecting second bail in Criminal Appeal No. 234 of 2020, this Court has observed that there is no change in circumstance. As a matter of fact, the second rejection by this Court was principally on the ground that

already same order was challenged and rejected by this Court and thus, virtually the last rejection of bail by this Court on merits is dated 23.09.2020. Now, it is to be seen whether time span can be considered as a change of circumstance. As well as, are there any chances of conclusion of trial at the earliest.

11. Learned Senior Counsel appearing for the appellant by placing reliance on the decision of the Supreme Court in case of ***Union of India vs. K.A. Najeeb (2021) 3 SCC 713*** would submit that under trials cannot be indefinitely detained pending trial. He would submit that it was consistent view of the Supreme Court that when there is no likelihood of conclusion of trial at the earliest the accused shall be released on bail. The fact remained that the appellant is in jail from last three years. Though charge-sheet has been filed on 14.11.2019 charges have not been framed. It is not denied that prosecution has tendered a list of total 45 witnesses and presence of one absconded accused is yet to be secured.

12. In our view, in context of right of liberty, delay can be technically said to be a change in circumstance. Certainly standstill position of trial for last three years is a circumstance to be considered while deciding the question of liberty.

13. Turning to the factual aspect, already investigation is complete and charge-sheet has been filed. Admittedly, there are no criminal antecedents of the appellant who is a lady. Having regard to the nature of accusation, there are no chances of repetition of crime. It is not a prosecution case that the appellant if release on bail she would tamper with the prosecution evidence. The appellant is the resident of Nagpur and thus, the aspect of abscondence can be taken care by putting certain condition. Inasmuch as, it is pointed out that the appellant is a Polio affected lady having 50% disability of which certificate issued by the Government authority has been produced. On the other hand, yet the charges are not framed and having regard to the sizable number of witnesses who are from different States, trial would certainly take considerable time. Having regard to the fact that there is no likelihood of conclusion of trial in near future, indefinite incarceration of appellant lady would be unjustifiable. In view of the above, we are inclined to grant bail, hence the following order :

- (a) The Appeal is allowed.
- (b) The impugned order dated 05.10.2021 passed by the learned Additional District and Sessions Judge, Nagpur in Bail Application under Exhibit 31 in Special Atrocity Case No. 91 of 2019 is hereby quashed and set aside.

- (c) The appellant – Priti w/o Manish Warjurkar shall be released on regular bail in respect of the offence punishable under Sections 363, 370, 376, 465, 468, 471 read with Section 34 of the Indian Penal Code, Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012, Section 9 and 10 of the Prohibition of Child Marriage Act, 2006 as well as Sections 3(1)(w)(i), 3(2)(va) of the SC and ST Act upon furnishing PR. bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
 - (d) The appellant/accused shall not tamper with the prosecution evidence or contact the witness in any manner.
 - (e) The appellant/accused shall attend each and every date of the proceedings.
 - (f) The appellant/accused shall furnish her complete address and cell number to the Investigating Officer.
14. The Criminal Appeal stands disposed accordingly.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Trupti