

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 522/2022

Sharukh Kha s/o Hamid Kha Pathan,

Vs.

State of Maharashtra through P.S.O. Wardha (City) and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mahesh Rai, Advocate for appellant
Shri A.M. Kadukar, APP for respondent no.1/State
Shri V.S. Wankhade, Advocate h/f Ms R.N. Gaikwad,
Advocate for respondent no.2.

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 28/09/2022

Heard.

2. The present appeal is filed under Section 14-A of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appeal is filed being aggrieved by the order dated 12/07/2022 passed by the learned Additional Sessions Judge, Wardha in Special Case No.118/2021 whereby regular bail of the appellant was rejected in Crime No.1122/2021 dated 07/09/2021 registered with the Police Station, Wardha (City) for the offence punishable under Sections 354, 354-A, 354-B of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and also Section 3(1) (w)(i)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The victim has lodged a report with Police

Station Officer Wardha (City) on 07/09/2021 alleging that, her father is already died and from last four years the appellant is residing with them and her mother is treating him as her second husband. It is alleged that the appellant came on the bed where the victim was sitting and by holding the hand stated to her that he wanted to sleep with her and by pushing her tried to sleep on her person. She gave a push to appellant and shouted due to which appellant went aside. She narrated the incident to her mother. The aforesaid offence came to be registered and charge-sheet came to be filed on 29/10/2021. Thereafter he again applied from the jail on 18/06/2022 which is registered on 07/09/2021 in Special Case No.118/2021.

4. It is submitted that the said application came to be rejected specifically when there is no necessity of custody of the appellant. It is contention of the appellant that the facts were exaggerated. The charge-sheet is already filed and custody of the appellant is no more required.

The application is vehemently opposed by the State.

5. In my considered opinion by imposing strict conditions, apprehension of the prosecution that the appellant will tamper with the witnesses will be taken care of. So far as, offences are concerned, which shows alleged criminal prosecution which appellant is

facing, the learned Counsel for appellant placed on record the copies of the bail orders wherein he was released on bail. The said orders are; 1) Criminal Application (BA) No.1255/2020, Criminal Application (BA) No.492/2021 and LD-VC- Cri Application (BA) No.1015/2020. As such it appears that though appellant was released on bail, there are criminal proceedings initiated against him. However, this fact also cannot be overlooked that custody of accused is not required. He can be released by imposing stringent condition. Accordingly, I proceed to pass the following order:

ORDER

- i) The appeal is allowed.
- ii) The order dated 07/09/2021 passed by the learned Additional Sessions Judge, Wardha in Special Case No.118/2021 in respect of Crime No.1122/2021 registered with Police Station Wardha City, for the offences punishable under Sections 354, 354-A, 354-B of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and also Section 3(1) (w)(i)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby quashed and set aside.
- iii) The appellant – Sharukh Kha s/o Hamid Kha Pathan be released on bail on his furnishing P.R. Bond of Rs.15,000/-(Rupees Fifteen Thousand Only) with one solvent surety in the like amount to the

satisfaction of the learned Additional Sessions Judge, Wardha.

iv) The appellant shall not tamper with the witnesses and shall not enter into the City of Wardha during the pendency of trial, except on the dates under trial.

v) The prosecution is at liberty to move application for cancellation of bail if there is any breach of any of the conditions imposed on appellant.

vi) In view of the record of appellant, he shall refrain from indulging in any criminal activity and if he would indulge in any criminal activities that will be the ground for cancellation of bail to the prosecution.

6. The present appeal stands disposed of accordingly.

JUDGE

R.S. Sahare