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

CRIMINAL APPEAL NO.434 OF 2021

Ashish s/o Ramnath Yadav,
Aged about 25 years, occupation -
Labour, r/o Bhogan, district
Nainpuri, Police Station Bebar (Uttar
Pradesh). **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
Through PSO Arvi, tahsil Arvi,
District Wardha.

2. Savita w/o Rajpal Chahande, Aged
about 40 years, occupation labour,
R/o Janata Nagar, Arvi, tahsil Arvi,
District Wardha. **Respondents.**

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Shri M.V.Rai, Counsel for the Appellant.
Shri Bhushan Dafle, Counsel for Respondent No.2.
Shri M.K.Pathan, Additional Public Prosecutor for Respondent
No.1/State.

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CORAM : V.M.DESHPANDE & G.A.SANAP, JJ.
DATE : JANUARY 04, 2022

ORAL JUDGMENT : (Per : V.M.Deshpande, J.)

1. Heard learned counsel Shri M.V.Rai for the appellant,
learned counsel Shri Bhushan Dafle for respondent
No.2/complainant, the mother of victim, and learned Additional

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Public Prosecutor Shri M.K.Pathan for respondent No.1/State.

Admit. Heard finally by consent of learned counsel for parties.

2. The appellant is accused No.1 in chargesheet filed by Arvi Police Station, Wardha for offences punishable under Sections 363, 366(A), 370, 376(3), 376(2)(n), 354, and 354-B read with Section 34 of the Indian Penal Code and under Sections 4, 5, and 6 of the Immoral Traffic (Prevention) Act, 1956 and under Sections 4, 6, and 8 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Entire copy of the chargesheet is placed on record containing statements of the victim recorded by police officer during course of investigation under Section 161 and also under Section 164 of the Code of Criminal Procedure. The said statement under Section 164 was recorded only before learned Judicial Magistrate First Class, Arvi (Court No.1).

3. Though offence punishable under Section 370 of the Indian Penal Code is very serious in nature, perusal of statements made by the victim herself on two occasions, i.e. before

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Investigator and before learned Magistrate, shows that the appellant has no role whatsoever in nature in alluring her on the pretext of giving her job and taking her away from legal and lawful guardianship and custody of the complainant from Arvi, district Wardha to Surat in the State of Gujarat. There is nothing on record to show that the appellant has any role in pushing the victim in the heinous trade of prostitution. In fact from statements of the victim it is clear that when she came in an Icecream Parlour, she came in contacted with the appellant and there she got his phone number and when any how she ran away from clutches of other accused persons, she contacted the appellant and, thereafter, the appellant rescued her and further took a step from taking her away from the prostitution trade. Statements of the victim show that the appellant, thereafter, treated her as his wife and they resided jointly.

4. At this stage, question of consent is not at all material inasmuch as according to the prosecution the victim was aged 16 years.

5. Be that as it may, burden will be on the prosecution to

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prove the age in accordance with law to show that the victim was minor during the period when she stayed along with the present appellant.

6. It is reported to this Court by learned counsel for respective parties that though charge is framed, from January 2021 there is no progress at all in Special Case No.179/2020 and the said case is pending on the file of learned Additional Sessions Judge, Wardha.

7. Presently, the Court is not deciding merits or demerits of the prosecution case *qua* the present appellant. Question is of the liberty of the appellant who is languishing in jail from 6.9.2020. We give our thoughtful consideration to the entire prosecution case in general and especially in respect of statements of the victim recorded by police officer during course of investigation under Section 161 and also recorded before learned Magistrate under Section 164 of the Code of Criminal Procedure. Perusal of statements of the victim shows that no role is attributed against the appellant that he removed her from legal and lawful guardianship and custody of her mother from Arvi, district Wardha

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to Surat in the State of Gujarat. Not only that, her statement is not there that at any point of time the appellant gave her any promise to provide her job. Her statements do not show that the appellant was involved in pushing her in the heinous trade of prostitution.

8. In view of the aforesaid, we are of view that the appellant, who is in jail and there is no possibility that his case pending before learned Judge below would come up in near future for its disposal, needs to be released on bail. Resultantly, we pass following order:

ORDER

(1) The criminal appeal is allowed.

(2) Order dated 1.10.2021 passed by learned Special Judge under POCSO Act, Wardha in Criminal Bail Application No.389/2021 is hereby quashed and set aside.

(3) The appellant be released on bail on his executing a P.R.Bond in the sum of Rs.10,000/- with two solvent sureties of the like amount out of which one should be of local in respect of Crime

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No.257/2019 registered with Arvi Police Station, Wardha for offences punishable under Sections 363, 366(A), 370, 376(3), 376(2)(n), 354, and 354-B read with Section 34 of the Indian Penal Code and under Sections 4, 5, and 6 of the Immoral Traffic (Prevention) Act, 1956 and under Sections 4, 6, and 8 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(4) The appellant is directed to remain present on each and every date of Trial unless exemption is granted by learned Judge below.

With this, the criminal appeal is allowed and disposed of accordingly.

JUDGE

JUDGE

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WANKHEDE

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