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

CRIMINAL APPEAL NO.819 OF 2022

Mayur s/o Kailash Pal,
Age 26 years,
Occupation labour,
Resident of Sawlikheda,
Taluka Dharni, district Amravati. **Appellant.**

:: V E R S U S ::

1. State of Maharashtra,
Through PSO Police
Station,
Dharni Police Station,
Dharni, taluka Dharni,
District Amravati.

2. XYZ (victim)
In Crime No.215/2022
Police Station Dharni,
Taluka Dharni,
District Amravati. **Respondents.**

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Shri D.S.Khushalani, Counsel for the Appellant.
Ms Deepali Sapkal, Counsel for Respondent No.2 – Victim.
Shri M.J.Khan, Additional Public Prosecutor for Respondent
No.1/State.

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CORAM : ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.
DATE : 19/12/2022

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. By preferring this appeal, the appellant who is original
accused has challenged order dated 29.7.2022 passed by learned
Additional Sessions Judge-1, Achalpur in Criminal Bail Application
No.389/2022 by which the application of the appellant – accused is
rejected.

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2. Crime is registered on the basis of report lodged by the victim – girl, who alleged that on 8.4.2022 at about 10:00 am her father left house and mother also went outside house along with her younger brother. She was alone in the house. At about 2:00 pm, the appellant – accused entered the house and took her along with him on a pretext that her father called in agricultural field and, therefore, she went along with him. But, the appellant – accused took her in an agricultural field and subjected her for sexual assault. On the basis of the said report, Dharni Police Station, district Amravati registered the offence vide Crime No.215/2022 punishable under Sections 354-A, 354-B, 376(3), 452, and 363 of the Indian Penal Code and under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and under Section 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant – accused was arrested on 27.4.2022.

3. It is contention of the appellant – accused that he is falsely implicated in the alleged offence. Learned Judge below had not considered that false and fabricated case is registered against him as there was false enmity between families of appellant – accused and the victim – girl. Now, investigation is complete and chargesheet is filed. Further custody of the appellant – accused is

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not required. There is no previous antecedent against him. Hence, he be released on bail.

4. The said application is strongly opposed by learned Additional Public Prosecutor Shri M.J.Khan for respondent No.1 - State and learned counsel Ms Deepali Sapkal for respondent No.2/victim - girl on the ground that if the appellant - accused is released on bail, there is every likelihood of tampering of evidence and pressuring the victim - girl. Hence, the appeal deserves to be dismissed.

5. Heard learned counsel Shri D.S.Khushalani for the appellant - accused. He submitted that initially the crime was registered only on the basis of allegation of molestation. Subsequently, after thought, allegation regarding sexual assault was made against the appellant - accused. There is no medical evidence to substantiate the contention that the victim - girl was subjected for sexual assault in an agricultural field as she has not sustained any external injuries. The medical certificate only shows that hymen was ruptured. There is no other evidence in the nature of statements of witnesses who have seen the victim - girl with the appellant - accused. Now, investigation is complete and chargesheet is filed. Further custody of the appellant - accused is

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not required. Hence, he be released on bail by setting aside the order passed by learned Judge below rejecting the bail.

6. On the other hand, learned Additional Public Prosecutor Shri M.J.Khan for respondent No.1 - State submitted that *prima facie* material shows that the appellant – accused is involved in the crime. If he is released on bail, he would tamper the prosecution evidence and also would pressurize witnesses.

7. Learned counsel Ms Deepali Sapkal for respondent No.2/victim - girl also raised apprehension that the victim – girl is attending her college at Dharni which is taluka place and if the appellant – accused is released on bail, he will tamper with the prosecution evidence and will pressurize the victim – girl. Hence, the appeal be dismissed.

8. Heard both sides. Perused the record. The offence is registered on the basis of the report lodged by the victim – girl. As per recital in the First Information Report, the only allegation regarding molestation is made in the First Information Report. Subsequently, approximately after 36 days, her statement was recorded wherein she made allegation regarding penetrative sexual assault against the appellant – accused. As per allegation, on 8.4.2022, the appellant – accused took her along with him on a

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pretext that her father has called her in agricultural field and subjected her for sexual assault in the agricultural field. As per medical certificate, no external injuries are shown, but hymen shown to be ruptured. During investigation, Investigating Officer recorded statements of witnesses. At this stage, we refrain ourselves from discussing material evidence which is collected by Investigating Officer during investigation. Now, investigation is complete and chargesheet is filed. Considering the nature of allegation, the prayer of the appellant can be allowed by imposing certain conditions. Hence, following order is passed:

ORDER

(1) The criminal appeal is **allowed**.

(2) The appellant – accused is released on bail on he executing a P.R.Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand) with one solvent surety of the like amount.

(3) The Bail Bond to be executed before learned Judge below.

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(4) The appellant – accused shall not enter taluka Dharni, district Amravati, till evidence of the victim – girl is recorded before learned Judge below.

(5) The fees of learned counsel Ms Deepali Sapkal appointed for respondent No.2/victim – girl be quantified and paid as per rules.

With this, the application is **disposed** of accordingly.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DEO, J.)

!! BrWankhede !!

BHUSHAN
RANA
WANKHEDE

Digitally signed
by BHUSHAN
RANA
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Date:
2022.12.23
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