

Farhan Hamid Shaikh ...Appellant
Versus
The State of Maharashtra & Anr. ...Respondents

Ms. S.S.Kaushik, A.P.P for the Respondent-State.

Mr. Jayendra Khairnar a/w Mr. Mufeez Ansari & Ms. Ankita Hazare
for the Respondent No.2.

PSI Ranjit Jadhav attached to Kandivali Police Station.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
DATE : 31st JULY, 2023

P.C. :

1. Heard learned Counsel for the appellant.
2. By this appeal, preferred under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

the appellant seeks his enlargement on bail in connection with C.R. No.21 of 2023, registered with the Ozar Police Station, Nashik Rural, for the alleged offences punishable under Sections 376(2)(j)(n) of the Indian Penal Code; under Sections 4,8 and 12 of the Protection of Children from Sexual Offences Act; and under Sections 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SCST Act').

3. Perused the papers. According to the prosecutrix, at the relevant time, aged about 17 years 10 months, the appellant would visit her house when her parents were away and would have forcible relations with her. She has alleged in the FIR that, pursuant thereto, she got pregnant and delivered a child in February, 2023. A perusal of the 164 statement of the respondent No.2, which is at page 121 of the appeal memo, shows that the same was recorded when the prosecutrix was aged about 17 years 11 months. In the said 164 statement, the respondent No.2 has stated that the appellant was coming to her house since February, 2022; that there was a love affair between them;

that the relations between them were consensual; and that from the said relationship, she became pregnant. She has further stated in her 164 statement that she has no complaint against any person.

4. On similar lines, is the statement of respondent No.2's mother, which is at page 122 of the appeal memo. The prosecutrix's mother, in her 164 statement has stated that there was a love affair between the appellant and her daughter i.e. the respondent No.2 and from the said relationship, her daughter became pregnant. She has further stated that the physical relations were not forcible and as such, she has no complaint against any person.

5. It appears that the appellant is aged 21 years and the respondent No.2 is today, about 18 years of age. At the relevant time, the respondent No.2 was a minor, aged around 17 years and 10 months and therefore, consent is immaterial.

6. By that as it may, having regard to the peculiar facts of the case, and in particular, the 164 statement of the respondent No.2 and

the fact, that the appellant is in custody from February, 2022, the appeal is allowed and the order dated 23rd June, 2023, passed by the learned Additional Sessions Judge, Niphad, District Nashik, is quashed and set aside and the appellant is enlarged on bail, in connection with C.R.No. 21 of 2023, registered with the Ozar Police Station, Nashik Rural, on the following terms and conditions :-

ORDER

- (i) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/-, with one or two sureties in the like amount ;
- (ii) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;
- (iii) The appellant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court.

7. The appeal is allowed and disposed of in above terms.

8. It is made clear, that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.