

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

CRIMINAL APPEAL NO.32 OF 2023

APPELLANT : Akshay S/o Vinod Kharate
(IN JAIL) Aged about 24 years, Occ. Student,
R/o. Lohi, Tq. Darwha, District
Yavatmal.

..VERSUS..

RESPONDENTS : 1 State of Maharashtra, through Police
Station Officer, Police Station,
Darwha, Tq. Darwha, District
Yavatmal

2 XYZ
In Crime No.864/2022 dated
04.10.2022 registered by P.S.O. P.S.
Darwha, Tah. Darwha, District
Yavatmal.

Mr R. J. Shinde, Advocate for Appellant.
Mr M. J. Khan, Addl. P. P. for Respondent No.1/State.
Mrs S. W. Gadhave, Advocate (Appointed) for Respondent No.2.

CORAM : **VINAY JOSHI AND VALMIKI SA MENEZES, JJ.**

DATE : **3rd MARCH, 2023.**

ORAL JUDGMENT : **(PER : VINAY JOSHI, J.)**

. Heard finally by consent of the learned Counsel
appearing for the parties.

Admit.

2. This is an appeal in terms of Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC and ST Act" for short), challenging the order of rejection of bail passed by the Trial Court in S.T. No.64 of 2022 dated 12.12.2022.

3. The appellant is arrested in Crime No.864 of 2022, registered with Darwha Police Station, District Yavatmal, for the offences punishable under Sections 376(3), 452 and 506 of the Indian Penal Code, 1860, Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(ii) and 3 (2)(va) of the SC and ST Act.

4. The bail is claimed on the ground of innocence, false implication and inadequacy of evidence. Moreover, it has been argued that the medical report does not corroborate the prosecution case about forcible sexual intercourse. Moreover, it is submitted that the prosecution has not adduced convincing evidence to establish that the victim was minor at the time of occurrence.

5. The State as well as Mrs Gadhave, learned Counsel (Appointed) for informant vehemently resisted the appeal

stating that since the victim was minor, the offence is complete. Moreover, it has been submitted that the victim has specifically stated the act of appellant (accused), and therefore, he is not entitled for bail.

6. Crime has been registered at the instance of victim girl aged 15 years. It is her case that appellant (accused) is resident of same village and they had love relationship. On 03.10.2022 around 10:30 a.m. when the victim was alone at her house, the accused came and under threats had sexually assaulted her. At relevant time, her aunt knocked the door that is why the accused ran away, and therefore, the report.

7. The FIR itself discloses that there was love relationship in between both of them. True if age of victim is proved, then her consent assumes no significance. However, besides of Gram Panchayat Certificate, there is nothing to establish the age of victim girl. Reading of FIR itself discloses that both were in love relationship. The medical paper discloses that there are no injuries on the person of victim which contradicts her case about forcible sexual assault. It is a matter of consideration that as per prosecution case, victim is merely

15 years of age and she has been forcibly raped and in that context medical report absolutely does not disclose any injury. Now, the investigation is complete and charge-sheet has been filed.

8. Having regard to above facts, we deem it appropriate to release Applicant Akshay Vinod Kharate on bail as trial will take its own time for disposal. We hereby allow the appeal and pass the following order :

ORDER

- i) Impugned order dated 12.12.2022 passed by the Trial Court in S.T. No.64 of 2022 is hereby quashed and set aside.
- ii) The Appellant Akshay Vinod Kharate is released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties of like amount.
- iii) The Appellant shall attend concerned Police Station on first Monday of each month in between 10:00 a.m. to 12:00 noon, till conclusion of

trial.

iv) The Appellant shall not tamper the prosecution evidence in any manner.

v) The criminal appeal is disposed in above terms.

vi) Fees of appointed counsel be given as per rules.

9. The above observations are made only to the extent of deciding this appeal, which has no impact on the merits of the case.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE