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

CRIMINAL APPEAL NO.72/2023

Sheikh Adil Sheikh Harun,
Aged about 25 years,
Occupation : Unemployed,
R/o Dehni, Taluka Digras,
District : Yavatmal
(In District Prison, Yavatmal) ... Appellant.

- Versus -

1. State of Maharashtra,
Through P. S.O.Arni,
District : Yavatmal.

2. XYZ in Crime No.460/2022
Police Station, Arni,
District Yavatmal. ... Respondents

.....

Mr. S.G.Varshani, Advocate for appellant.
Mr. V.A.Thakre, A.P. P. for respondent no.1.
Mr. S.G.Karmarkar, Advocate for respondent no.2.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.
DATE : 15.03.2023.

ORAL JUDGMENT (Per Bharat P. Deshpande, J.)

1. Heard Mr. Sajid G.Varshani, learned counsel for appellant, Mr. V.A.Thakre, learned APP for respondent no.1 and Mr. S.G.Karmarkar, learned counsel for respondent no.2.

2. **Admit**. Heard finally at the admission stage with consent of learned counsel appearing for the parties.

3. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, thereby challenging impugned order dated 23.1.2023 rejecting bail application filed by the appellant.

4. Reply has been filed on behalf of respondent nos.1 and 2 opposing the present appeal.

5. The appellant was arrested on 2.9.2022 in Crime No.460/2022 registered at Arni Police Station, District Yavatmal, for the offences punishable under Sections 363,

366, 366-A, 212, 376, 376(2) (n), 506 read with Section 34 of Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), Sections 3(2) (v), Sections 3(2) (v-a) and Section 3(1)(w)(i) (ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. In nutshell, it is the contention of the learned counsel for the appellant that there is love affair between the appellant and the victim and that the victim volunteered to accompany the appellant at different places. The victim is 17 years of age and a matured girl having all understanding and there was consensus amongst them to move from one place to another and also with regard to physical relationship.

7. The learned counsel for the appellant would then submit that since the Charge-sheet is already filed and other two co-accused persons are released on bail, no purpose would be served in rejecting the bail application. He would submit

that the appellant is ready to reside at different place and undertake not to enter the village where the victim resides. He then placed reliance on the following decisions of this Court:

(i) *Anil Shankar Mallav Vs. The State of Maharashtra and another (Bail Application No.2754/2021 dated 12.12.2021)*; and

(ii) *Vishal Prakash Kharade Vs. The State of Maharashtra, through Police Station Officer, Police Station Tiwasa, Dist. Amravati and another (Criminal Application (BA) No.758 of 2022 dated 24.8.2022*).

8. The learned APP appearing for the State as well as learned counsel appearing for respondent no.2 vehemently opposed the present appeal on the ground that it is not at all a simple love affair but, it is a conspiracy and the appellant somehow convinced the victim, who was minor, to leave the residence of her grandfather and to accompany him to

different places only under the pretext of having love affair and then sexually exploited her that too without her consent and against her wish. Both the learned counsels would further submit that that since the victim was minor, a question of consent would have no relevance. The appellant, if released, would certainly try to influence the victim as well as her relatives and there is possibility of winning over such witnesses or threatening them with the aid of other accused persons.

9. The learned Trial Court, after considering entire material placed with the Charge-sheet, observed that the victim was lured and trapped under the guise of showing love and she was taken away from the lawful guardianship. First of all, the appellant took the victim to Surat and when co-accused persons intimated him, about missing report and the police are in search of them, he shifted the victim from Surat and went to Hyderabad and thereafter to Goa via Mumbai. At these places, the appellant had sexually intercourse against the wish of the

victim. She was not allowed to move out of the rented premises whenever the appellant used to go out.

10. We have carefully perused the documents attached to the Charge-sheet. It is clear that the victim as on the date of the offence was below 18 years of age. Statement of the victim recorded by the police under Section 161 of the Code of Criminal Procedure and thereafter her statement recorded by the Magistrate under Section 164 of the Code of Criminal Procedure would clearly go to show that the appellant used to follow her while she was going to attend the college and he, in fact, forced her to get acquainted with him. The statement of the victim further show that when she was attending the shop of her grandfather at the village, the appellant used to visit the said shop and was forcing her to talk with him and when she refused to talk to him, he threatened her that on one day he will kidnap her. The victim further stated that she used to attend classes at Digras by travelling in an autorickshaw and at that time, the appellant used to follow her on his motorcycle.

Thus, it is clear from the above statements that it is not simply a love affair as tried to be claimed, however, the appellant, in fact, tried to influence the minor girl and forced her to acquaintance with him. Admittedly, the victim is a girl from a village and though she was studying in 11th standard in high school at Digras, she was residing along with her grandfather in the village called as “Dehni”.

11. Both the statements of the victim clearly go to show that she was lured to leave the house of her guardian and thereafter she was taken to different places wherein the appellant forced himself on her without her consent. At this stage, it is necessary to note that when the victim was minor i.e. below the age of 18, a question of consent has no meaning at all. No doubt, it is is true that the victim accompanied the appellant to Surat and thereafter to different places including Goa, she was requesting the appellant to allow her to go to her parents’ place, however, the appellant was not allowing her on the pretext that he will take her only after the period of one

year. The statement of the victim further shows that he forced her to withdraw amount from her bank account and then took her to Mumbai and thereafter to Madgaon Goa. They stayed in one room. The appellant used to go for work and while leaving the room, he used to lock the said room from outside. The victim was requesting the appellant to allow her to go, however, he used to assault her. Finally, the victim managed to call her mother and thereafter the parents of the victim reached Madgaon and then they brought her back to Digras.

12. The medical examination report of the victim supports the ocular statement. Thus, it is clear that the present matter is not a simple case of love affair and hence the decisions relied upon by the learned counsel for the appellant in the cases of *Anil Shankar Mallav* (supra) and *Vishal Prakash Kharade* (supra) are distinguishable.

13. It was submitted that the victim voluntarily accompanied the appellant to different places without any

complaint and hence, she consented to have such relationship. Such submission are of no substance, for the simple reason that in the present matter, Sections 363 and 366-A of the Indian Penal Code have been invoked. The victim was admittedly minor at the time of alleged offence. Therefore, removing such minor from the custody of the guardian and inducing such minor to go from place to place with an intent that she would be forced or seduced to illicit intercourse, show that her willingness or consent is immaterial. When the Legislature intended that any consent of minor with regard to sexual relationship, cannot be considered as consent in the eyes of law, the same analogy applies to a minor, who is removed from the legal custody and was induced or forced to move from place to place knowingly that she would be forced or seduced to have illicit relationship. In this matter, the minor-victim, under the pretext of alleged love, was removed from the local guardian and was taken to different places. The intention of the appellant would clearly go to show that he

wanted to satisfy his lust. Thus, such contention would not in any way require to be considered at this stage for bail.

14. The apprehension shown by the learned Trial Court that there is possibility of threatening the witnesses, if the appellant is released on bail, cannot be simply brushed aside.

15. The other two accused persons were released on bail, however, the appellant cannot claim parity as the role played by other two accused persons is totally different.

16. Having said so, we are not inclined to accept the contentions raised in the present appeal, which accordingly deserve to be rejected.

17. The appeal stands rejected.

(BHARAT P. DESHPANDE, J.) (VINAY JOSHI, J.)

ambulkar.

Signed By:MUKUND LAXMANRAO AMBULKAR
Private Secretary
Signing Date:16.03.2023 17:06