

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

CRIMINAL APPEAL NO. 180 OF 2023

Shaikh Javed Shaikh Dada, Age 21
 years, Occ. Labor, R/o Panchbangla, Old
 Town, Badnera, Tq. & Dist. Amravati.

... APPLICANT

VERSUS

1. The State of Maharashtra, through
 P.S.O. of P.S. Badnera, Tq. & Dist.
 Amravati.

2. Sau. Rani Rajesh Kothar, Age 40 yrs,
 Occ. Household, R/o New PotarChal,
 Old town, Badnera, Tq. & Dist.
 Amravati.

... NON-APPLICANTS.

Ms. S.S. Jadhav, Advocate for the applicant.
 Shri Thakare, A.P.P. for the non-applicant/State.
 Mrs. Sonali Saware/Gaidhane, Advocate for the non-applicant no.2.
 (appointed.)

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 08.06.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard.

2. **ADMIT.** The matter is taken up for final disposal by consent of learned Counsel appearing for the parties.

3. This is an appeal in terms of Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC and ST Act') raising challenge to the order of rejection of bail dated 22.08.2022 in Crime No.292 of 2022 registered with the Badnera Police Station, District Amravati for the offence punishable under Sections 363, 376(2)(n) of the Indian Penal Code, Section 4 of the Protection of Children from the Sexual Offences Act, 2012 (POCSO) and Section 3(1)(w)(i) and (ii), 3(2)(v) and (va) of the SC and ST Act.

4. The bail is claim on the ground of innocence, false implication, inadequacy of evidence and particularly, no force or compulsion is demonstrable from the prosecution material. Moreover, it is submitted that though the victim is stated to be 17 years of age, it is a matter of trial to establish the same. Lastly, it is submitted that the victim's own statement shows that she was at the age of discretion and ran away with the applicant.

5. The State resisted the bail by contenting that the victim was minor 17 years of age. The prosecution has collected birth certificate as well as school leaving certificate to show that, she was minor at the

time of occurrence.

6. Learned Counsel appearing for the informant has pointed out that the first incident of sexual intercourse took place when the victim was 15 years of age. Moreover, it is pointed out that mother of accused has facilitated the crime having fully aware that the victim was a minor. Considering the age of the victim, bail is prayed to be rejected.

7. On 10.04.2022, the victim aged 17 years, went missing, which caused her brother to lodge the report for the offence punishable under Sections 363 of the Indian Penal Code. After near-about one month, both were apprehended by the Police on which the victim's statement was recorded. As per the victim's case, she was well acquainted with the accused. The accused had also proposed her for marriage, but victim's family members refused due to caste barrier. Victim stated that from two years preceding to the occurrence, they had sexual relations. According to the victim, on 09.04.2022, both ran away to Amravati and stayed at a small village. She stated that during day hours, the accused was attending his work place and used to returning in late hours. Finally on 06.05.2022, concerned Police came and took the victim into the custody.

8. We have also examined history given by the victim to the

Medical Officer. She has stated that there was love affair and both ran away on 09.04.2022. We are aware that minor's consent no cogent in the eyes of law. However, it is apparent that the victim who was at the verge of majority, ran away with the accused and lived with him for the period of one month. It is not the case that she was kept in confinement or had no opportunity to obtain public resources. It is not a case that force or violence is used. It is a matter of trial to establish the minority of the victim, which is *prima facie* challenged by the accused.

9. Learned Counsel for the applicant has placed reliance on the decision of this Court in case of ***Sunil Mahadev Patil vs. State of Maharashtra dated 03.08.2015 (Bail Application No.1036 of 2015)***, wherein similar issue was considered and having regard to the love relationship, age of the victim at the verge of majority, this Court has granted the bail.

10. Investigation is complete and charge-sheet is filed. The trial will take considerable time for its disposal. We deem further pre-trial custody unwarranted. Having regard to all above facts, we are inclined to release the accused on bail by imposing certain conditions, hence the following order.

(a) The appeal is allowed.

Deleted and
substituted vide
Court's order
dated 16.06.2023

(b) ~~We hereby quashed and set aside the Crime No.292 of 2022 registered with the Badnera Police Station, District Amravati for the offence punishable under Sections 363, 376(2)(n) of the Indian Penal Code, Section 4 of the Protection of Children from the Sexual Offences Act, 2012 (POCSO) and Section 3(1)(w)(i) and (ii), 3(2)(v) and (va) of the SC and ST Act as well as related charge sheet.~~

(b) We hereby quash and set aside the order dated 22.08.2022 passed beow Exhibit 1 in Criminal Bail Application No.923 of 2022 by the Additional Sessions Judge-1, Amravati.

(c) The appellant/accused Shaikh Javed Shaikh Dada is released on bail on his furnishing PR bond of Rs.25,000/- with one or two sureties in the like amount.

(d) The appellant/accused shall not enter into the limits of Badnera city for the period of one years from today.

(e) The appellant/accused shall not tamper with the prosecution evidence in any manner.

11. The Appeal stands disposed of in above terms.

12. Fees of the appointed Counsel be paid as per Rules.