

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

CRIMINAL APPEAL No. 259/2023.

Vaibhav s/o Shalikrao Dhoble
Aged about 23 years, Occupation
Private Job, resident of Near
Vitthal Rukhmini Mandir,
Sindi [Railway], Tahsil Seloo
District Wardha.

... **APPELLANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Sindhi [Railway],
Tahsil Seloo, District Wardha.

2.XYZ [Victim in Crime No.263/2022
registered at P.S. Sindi [Railway] -
name and address supplied in sealed
envelope].

... **RESPONDENTS.**

Mr. Y.N. Sambre, Advocate for the Appellant.
Mr.S.S. Doifode, Addl.P.P. for Respondent No.1/State.
Mrs.S.Saware, Advocate [Appointed] for Respondent No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES,, JJ.
DATE : JUNE 15, 2023

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

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

Admit.

2. This appeal raises a challenge to the rejection of order of regular bail by the Sessions Judge [Special Court], Wardha vide order dated 12.01.2023 in Criminal Bail Application No.9/2023.

3. The appellant/accused was arrested in connection with Crime No.263/2022 registered with Sindi Police Station, Wardha for the offence punishable under Sections 376[3], 450 and 506[2] of the Indian Penal Code, Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3[1][w][i], 3[1][w][ii],

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3[2][v], 3[2][va] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocity] Act, 1989. Initially the appellant applied for bail to the Special Court, which was rejected and therefore, this appeal.

4. The appellant claimed bail on the ground of innocence, false implication, inadequacy of material, delay in lodgment of first information report, absence of injury on the person of victim and himself and has showed readiness to abide by the conditions which may be imposed while granting bail.

5. The State has resisted bail by stating that the victim was minor and thus, her consent assumes no significance. It is pointed out the some injuries were found on the person of the victim and out of fear there was no immediate disclosure.

6. The aforesaid crime was registered at the instance of the informant girl aged 14 years. It is her contention that through one friend, the appellant has contacted the victim and then they had

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telephonic conversation. On 02.10.2022, in the afternoon the accused arrived at her house and by giving threat, had forcible sexual intercourse. Since the victim was under fear, she kept mum. On 06.10.2022, she felt uneasy while in School and hence, disclosed the things to the teacher. Thereafter, she also disclosed the incident to her parents on which report came to be lodged on 06.10.2022.

7. The learned Counsel appearing on behalf of the appellant/accused took us through the medical examination report which was conducted on 07.10.2022. Our attention has been invited to the medical papers to show that no injuries were found on the person of the informant. Moreover, though the injury on hymen was present, it was explained by the medical officer that there were old multiple tear present, and no inflammation and no redness. On this count it is argued that in absence of injuries, it is difficult to believe informant's contention that actually there was sexual intercourse in between them.

8. In response, the learned Counsel appearing for the

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informant would submit that the medical examination has been conducted after 4 days and thus, there is less possibility of finding injury on the person of the victim. This is a matter of appreciation at the time of trial, but, at present we find that during medical examination, conducted after 4 days, there were no injuries on the person of the victim. We are well aware that existence of injury is not a must for establishing the guilt, however, that is one of the aspect which we can take into account while deciding bail application.

9. It reveals that the alleged incident took place on 02.10.2022, however, the victim did not disclose anything till she felt uneasy while in school. It assumes significance that despite forceful sexual intercourse by a stranger, she did not ventilated the grievance. The submission in this regard requires consideration. The investigation is completed and charge sheet is filed. True there may be possibility of tampering, however, care can be taken thereof by imposing certain stringent conditions. The trial will take its own time for disposal, therefore, we deem it fit to release the appellant on

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bail by imposing conditions to maintain the balance. In view of above the appeal deserves to be allowed, hence, the following order.

ORDER

- [i] Criminal Appeal is allowed and disposed of.
- [ii] The appellant/accused – Vaibhav Shalikrao Dhoble be released on bail in connection with Crime No.263/2022 registered with Sindi Police Station, District Wardha for the offence punishable under Sections 376[3], 450 and 506[2] of the Indian Penal Code, Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3[1][w][i], 3[1][w][ii], 3[2][v], 3[2][va] of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocity] Act, 1989, on his furnishing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- [iii] The appellant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

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- [iv] The appellant/accused shall not enter the territorial limits of entire Tahsil Seloo till the disposal of the trial.
- [v] The appellant/accused to provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.
- [vi] Fees of the appointed Counsel for respondent no.2 be quantified and paid as per Rules.

JUDGE

JUDGE