

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

CRIMINAL APPEAL No. 285/2023.

Ejaj s/o Shafikha Pathan,
Aged about 32 years,
Occupation- Labour, resident of
Kachar Mohalla, Armori,
Tq. Armori, District Gadchiroli
[Presently at District Prison,
Chandrapur].

...

APPELLANT.

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Police Station Armori,
Taluq Armori, District Gadchiroli.

2.XYZ in Crime No.438/2022
Registered at Police Station Armori,
Taluq Armori, District Gadchiroli.

...

RESPONDENTS.

Mr.R.M. Daga, Advocate for the Appellant.
Mr. A.M. Kadukar, A.P.P. for Respondent No.1/State.
Ms. D.V. Sapkal, Advocate [Appointed] for Respondent No.2.

CORAM : VINAY JOSHI AND

BHARAT P. DESHPANDE, JJ.

DATE : MAY 03, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Considering the controversy involved in the matter and by consent of the learned Counsel for the parties, the Appeal is taken up for final disposal.

Admit.

2. This is an appeal in terms of Section 14-A of the Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Act, [Atrocities Act] raising challenge to the order of rejection of regular bail passed by the Additional Sessions Judge, Gadchiroli in Criminal Bail Application No.288/2022 on 02.03.2023. The appellant came to be arrested in connection with Crime No.438/2022 for the offence punishable under Sections 363, 376, 376[2][n] and 376[3] of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act and Sections 3[1][w][i],[ii], 3[2]

[v] and 3[2][va] of the Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Act. Bail is claimed on the ground of innocence, false implication, inadequacy of the material absence of force or compulsion etc. The State, as well as the learned Counsel for the informant resisted the appeal by contending that the victim is 13 years and 10 months old, and thus, her consent assumes no significance. Moreover, it is submitted that the offence is of serious nature, which may attract punishment of severe nature. It is submitted that the possibility of tampering with the evidence cannot be ruled out.

3. It is informants case that she was having love affair with the accused since last one year. Since informants family members have disapproved their relationship, it was disassociated for some period, but, later on continued. Once the victim went to Pachmarhi with the accused and stayed there for two days, but, there was no sexual assault. It is her case that on 09.11.2022, the accused called the victim to the house of his friend, where the later went. She stated that during the period from 09.11.2022 to 12.11.2022, daily

she used to visit the house of friend of the accused during night hours, where they had sexual relations, and therefore, the report.

4. The learned Counsel for the appellant has denied the occurrence by stating that there was nothing beyond love affair. In the alternative, it is submitted that the alleged occurrence was at the instance of the victim, who was at the age of understanding. He would submit that though minors consent has no meaning in the eye of law, however, this aspect has to be considered while entertaining bail application. It is pointed out that there is no force or compulsion ever stated by the victim in her statement. In that context, we have gone through the medical examination report, which does not disclose the injury denoting use of force. It reveals from the police papers that the victim who was having an understanding to fall in love and maintain relationship, had on three occasions during night hours, went to the accused where the alleged incident occurred. It is apparent that at the most it is a case where the victim herself went for the relation. More importantly, the learned Counsel for the appellant has attracted our attention to the

Rgd.

subsequent statement of victim recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure. In said statement the victim nowhere stated about their sexual relations, rather she stated that on three days she went to the room of the friend of the accused for sleeping, but, never stated about sexual relations.

5. By this time, the investigation is completed and charge sheet is filed. The trial will take its own time for disposal. Having regard to the ABOVE circumstances, liberty of appellant can be protected by imposing stringent conditions, so as to exclude the possibility of tampering. In view of that following order is passed.

ORDER

- [i] Criminal Appeal is allowed and disposed of.
- [ii] The impugned order passed by the Additional Sessions Judge, Gadchiroli in Criminal Bail Application No.288/2022 on 02.03.2023 is quashed and set aside.
- [iii] The appellant – Ejaj Shafikha Pathan shall be released on bail in connection with Crime No.438/2022 registered

Rgd.

with Armori Police Station, District Gadchiroli for the offence punishable under Sections 363, 376, 376[2][n] and 376[3] of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act and Sections 3[1][w][i],[ii], 3[2][v] and 3[2][va] of the Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Act, on his executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

- [iv] The appellant shall not enter into the territorial limits of Armori Tahsil, till the conclusion of trial.
- [v] The appellant shall not tamper with the prosecution evidence in any manner.
- [vi] The appellant shall inform his intended place of residence and cell/ mobile number to the Investigating Officer.
- [vii] Fees of the appointed Counsel for Respondent no.2 be paid as per Rules.

JUDGE

JUDGE