

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

CRIMINAL APPEAL NO. 295 OF 2023

Satish S/o Bhivram Tarone,
Aged about 21 years, Occ : Labour
R/o. Kanhartola Potekasa, Tah – Lanji,
District – Balaghat

}

.. Appellant

Versus

1. State of Maharashtra,
Through Police Station Officer,
Police Station Salekasa, Gondia
2. XYZ Victim, Crime No. 0478/2022,
P.S.O. Salekasa District Gondia

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.. Respondent No.1

.. Respondent No.2

Mr. A. A. Vastani, Advocate for appellant.

Mr. S. M. Ghodeswar, A.P.P. for respondent Nos.1 State.

Mr. A. M. Kukday, Advocate for respondent No.2 victim.

CORAM : URMILA JOSHI-PHALKE J.

PRONOUNCED ON : 14/07/2023

ORAL JUDGMENT

Heard. **Admit.** Heard finally by the consent of the
learned counsel appearing for the parties.

(2) Present appeal is preferred under Section 14(A)(2)
of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989, challenging the order passed by the Special Judge, Gondia rejecting the application for grant of bail of the accused/appellant.

(3) The appellant was arrested on 18/11/2022, as the Crime was registered against him on the basis of report lodged by father of the victim on 18/10/2022 on an allegation that the daughter of the informant left the house on 14/10/2022 for going to school and not returned back. It is alleged that unknown person has kidnapped her by promising. In view of the said report, missing report was lodged against unknown person. During investigation, the victim girl was traced and her statement was recorded. From her statement it reveals that she joined the company of the accused as he promised her for marriage and subjected her for sexual assault. After recording her statement, the crime was registered against the present appellant for the offences punishable under Sections 363, 376(2)(n) of Indian Penal Code and under Sections 3(2)(v), 3(1)(w) (i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Since the date of arrest, the appellant is behind the bar.

(4) As per the contention of the appellant that there was love affair between him and the victim girl. The victim girl

insisted him to leave her parent's house and take her at some other place. Accordingly, she joined his company and they stayed at Beltarodi, Nagpur in a rented premises. They stayed as husband and wife. The victim girl has already attained the age of majority. Out of love affair, they stayed together as husband and wife and no offence is committed by the present appellant. For no reason the accused/appellant was in custody for sufficient period. The present appellant is behind the bar and no purpose will be served by keeping him behind the bar.

(5) The said application is strongly opposed by the State on the ground that there is a *prima facie* material against the present appellant, as victim girl was minor at the time of incident and her consent is not relevant. Learned APP further submits that if the accused/appellant is released on bail, he will tamper the prosecution evidence. Learned counsel Mr.Amit Kukday for the respondent No.2 endorse the same contentions and prayed for rejection of the said application.

(6) Heard learned counsel for the appellant, he reiterated the contentions and invited my attention to the statement of

the victim girl, which shows that it was the victim girl, who joined the company of the accused and insisted him to take her out of the village, thereafter, they stayed as husband and wife. Out of love affair, they attracted to each other and there was physical relationship between them. He submitted that victim girl was on the verge of attaining the age of majority and aware about the consequences. The appellant is also aged 21 years old. Whatever happened between them is out of love relationship. Now, investigation is completed, charge-sheet is filed, therefore, no purpose will be served by keeping the accused/appellant behind the bar.

(7) Learned APP is reiterated the same contentions and objected the application. Learned counsel for respondent No.2 victim submitted that if accused/appellant is released on bail, he will tamper the prosecution evidence. Hence, bail application deserves to be rejected.

(8) Having heard the learned counsel for the appellant, as well as the State and victim girl, on perusal of the investigation papers, admittedly FIR was lodged against the unknown person. During investigation, it reveals that there was love affair between

accused/appellant and the victim girl. The victim girl was 17 years of age means on the verge of attaining age of majority. The physical relationship was there between them out of love affair.

(9) As observed earlier in various appeals and applications that in many cases wherein the appellant and victim comes together out of love affair and there was physical relationship between them are to be treated differently. It is not the case that the accused/appellant was subjected the victim for sexual assault out of the lust. Considering that the appellant and victim both are of young age attracted towards each other out of love affair and there was a physical relationship. Now, the investigation is completed, charge-sheet is filed, hence, no purpose will be served by keeping the accused/appellant behind the bar. In view of that the appeal deserves to be allowed. Accordingly, I proceed to pass the following order :

ORDER

(A) The appeal is allowed.

(B) The applicant, namely, **Satish S/o Bhivram Tarone** be released on bail in connection with Crime No.0478/2022 registered with Police Station, Salekasa, Gondia for the offence punishable under Sections

Sections 363, 376(2)(n) of Indian Penal Code and under Sections 3(2)(v), 3(1)(w) (i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on executing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount.

(C) The accused/appellant shall not induce threat or promise any witnesses who are connected with the alleged crime.

The appeal is disposed of.

[URMILA JOSHI-PHALKE J.]

KOLHE