

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

CRIMINAL APPEAL NO. 383 OF 2023

APPELLANT : Golu @ Ganesh Ramesh Chavhan,
Age : 22 yrs, occu - Labour,
R/o Vithala, Digras,
Tah : Digras, Dist : Yavatmal.

V E R S U S

RESPONDENTS :

1. State of Maharashtra,
Through Police Station Officer,
Digras Police Station, Tah:Digras,
Dist. Yavatmal.
2. X Y Z,
In crime no.226/2023 dated
05/04/2023 registered by P.S.O.
Digras, Tah. Digras, Dist. Yavatmal.

Shri Shaharukh Sheikh, Advocate for appellant.
Shri V. A. Thakare, Additional Public Prosecutor for respondent No.1.
Shri R. J. Shinde, Advocate for respondent No.2.

CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATED : 19/07/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. Heard finally with the consent of learned counsel appearing for the parties.
2. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short, "Atrocities Act"), raising a challenge to the order of rejection of regular bail dated 31/05/2023 passed in Criminal Bail Application No.70/2023.

3. The appellant – Golu @ Ganesh Ramesh Chavhan, aged about 22 years was arrested by concerned police in Crime No.226/2023 for the offence punishable under Section 363 of the Indian Penal Code. On the basis of statement of minor victim, the police have added the provisions of Section 376(i)(j) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, and under Section 3(2) (va), 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. Shri V. A. Thakare, learned APP for respondent No.1 and Shri R. J. Shinde, learned counsel for respondent No.2 resisted to grant bail. They also submitted that the victim being minor, her consent assumes no significance.

5. It is appellant's contention that out of village rivalry, he has been falsely implicated. It is submitted that though the appellant had friendly relations with a young girl, however, he had not committed sexual intercourse with her. According to the appellant, there is no material to indicate that he had sexually assaulted the victim girl. The victim girl was 15 years and 7 months old at the time of incident. We have examined the statement of victim girl. She stated that on 05/04/2023 in late

midnight, she herself initially sent message to the accused on mobile on which they had exchange of messages. In the late midnight, the victim herself went out of the house to meet the appellant obviously to her boy-friend, as usual. She stated that thereafter both of them ran towards forest where they missed the way. According to the victim in said forest, the appellant had sexual intercourse with her and on following day, they were brought back.

6. It is evident that the victim was of understandable age and she went with her own volition with a neighbouring young boy. There are no allegations that either the accused has used force or compelled her to leave her house. Though there are allegations of sexual assault, however, medical report prima facie does not substantiate her contention. It is a matter of trial to ascertain whether the appellant had sexual intercourse with the victim. Investigation is complete and charge sheet has been filed. Having regard to the above facts, the appellant's liberty can be protected by imposing stringent conditions.

7. In view of the above, the following order is passed :-

ORDER

- i] The appeal is allowed.

ii] The impugned order of rejection of bail dated 31.05.2023, passed in Criminal Bail Application No.70/2023, is hereby quashed and set aside.

iii] The appellant – Golu @ Ganesh Ramesh Chavhan shall be released on bail in Crime No.226/2023, registered with Police Station Digras, District – Yavatmal, relating to offences punishable under Sections 363, 376(i)(j) of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, Sections 3(1)(w)(i)(ii) and 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on his furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.

iv] The appellant shall not enter within the territorial limits of Digras Taluka till recording of the evidence of minor victim.

v] The appellant shall not tamper with the prosecution evidence in any manner.

vi] Accused shall provide his intended residential address and cell number to Investigating Officer.

vii] Breach of either conditions would give rise to the prosecution to apply for cancellation of bail.

8. The appeal stands disposed of in the above terms.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Choulwar