



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

CRIMINAL APPEAL NO.401 OF 2023

Maroti Murlidhar Nikhade, Aged 36
years, Occ. Labour, At zari, Post
Khadsangi, Tah. Chimur, District
Chandrapur, (presently at District Prison,
Chandrapur.)

... APPELLANT.

VERSUS

1. The State of Maharashtra, through
Police Station Officer, Police Station,
Chimur, District Chandrapur.
2. XYZ in C.R. No.205/2022, registered
at Police Station Chimur, District
Chandrapur.

... RESPONDENTS.

Shri R.M. Daga, Advocate for the appellant.
Shri Rode, A.P.P for the respondent/State.
Shri Bhushan Bhendarkar, Advocate for respondent no.2
(appointed)

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 28.08.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

Heard. ADMIT.

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

3. This appeal raises a challenge to the order dated 01.03.2023 passed on Exhibit 18 in Special POCSO Case No.29 of 2022, whereby regular bail has been rejected by the Additional Sessions Judge, Warora. Learned Counsel appearing for the appellant would submit that the material collected during the course of investigation does not make out a case to confine the appellant till conclusion of trial. In short, he would submit that the police papers at the most shows that there was consensual relationship between the well grownup prosecutrix with the appellant. Medical examination report does not show marks of force or violence. The appellant is ready to abide by the conditions, hence prayed to release on bail.

4. *Per contra*, learned A.P.P. as well as learned counsel (appointed) appearing for respondent no.2 resisted the appeal by pointing towards the seriousness of the crime. It is submitted that the informant girl was minor at the time of occurrence, and thus, her consent assumes no significance. It is stated that the informant has repeatedly stated that, under threat and compulsion she was sexually abused and thus, it is not a case of bail. Moreover, our attention has

been invited to earlier bail application, which was rejected by the Trial Court and there was no change in circumstance.

5. Crime was registered at the instance of the report lodged by the informant girl aged 16 years 8 months and 14 days. It is her case that she was residing in the house of her grandparents. The appellant was the nearby resident. They had a casual acquaintance in which they exchange cell numbers. Thereafter, they were frequenting with each other by messages, calls, what's app chats, video calls, etc.. The appellant had expressed that he desires to marry with her.

6. The informant stated that sometime in the month of February, 2022, during night hours, the appellant entered in her house, dragged her to nearby place and had forcible sexual intercourse. The appellant also threatened her for dire consequences, if the things are disclosed. She stated that thereafter, on and often, the appellant used to come to her house and under threat of defaming her, had sexually exploited. On 26.06.2022, during night hours, she had gone out to ease herself. Her family members suspected her and started to search with a torch. At that time, the appellant came, pulled her, took her at some distance and had sexual intercourse. Thereafter, the appellant asked his two friends to take away the informant as her family is in her search.

Then the informant was taken away by motorcycle at one house, where she stayed overnight and on the following day, she went to her friend's house, where she stayed for one day and then lodged the report.

7. Our attention has been invited to the statement of the friend of the informant (where she lived), who stated that there was no disclosure to her about the occurrence. *Prima facie*, entire incident as stated by the informant, gives impression that there was no force or compulsion in the entire occurrence. The relationship was going on for more than four months. The appellant's submission that only because of her act was exposed to the family members, she lodged the report, needs serious consideration in trial. Our attention has been invited to the medical report, which does not support the case of forcible sexual intercourse. Though the first bail was rejected by the Trial Court however, as per the appellant's learned Counsel it was not challenged before this Court. Investigation is complete and charge-sheet has been filed. Age of the victim and act of sexual assault is a matter of proof in the trial.

8. The appellant is in jail from 01.07.2022. The trial will take its own time for disposal. In view of above, we hold that a case is made out for grant of bail. In order to safeguard the interest of prosecution,

certain conditions can be imposed while releasing the appellant on bail.

In view of that we are inclined to grant bail, hence the following order :

- (a) The appeal is allowed.
 - (b) We hereby quash and set aside the impugned order of rejection of bail dated 01.03.2023 passed by the Additional Sessions Judge, Warora below Exhibit 18 in Special POCSO Case No.29 of 2022.
 - (c) The appellant Maroti Murlidhar Nikhade shall be release on bail on his furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.
 - (d) The appellant shall not enter within the territorial jurisdiction of taluka Chimur District Chandrapur till recording of the evidence of the prosecutrix.
 - (e) The appellant shall provide his intended residential address and cell number to the concerned Police within one week from his actual release.
 - (f) The Applicant/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.
9. Breach of either of condition would give rise to the

prosecution to move this Court for cancellation of bail.

10. The appeal stands disposed of accordingly.

11. Fees of appointed Counsel be paid as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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