



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

CRIMINAL APPEAL NO.469/2023.

1. Sabir Firoj Garave
Aged about 22 years,
Occ. Education.

2. Azhar Javed Balapure
Aged 25 years,
Occ. Labour,

Both R/o Gawlipura, Tq. Digras
District Yavatmal

...Appellants.

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Digras,
Dist. Yavatmal.

2. X,Y,Z informant through P.S.O.
Digras, Tah. Digras,
Dist. Yavatmal.
In Crime No.332/2023
Dated 6.6.2023.

... Respondents.

...

Mr. A.A. Zade. Advocate h/f Mr. Shaharukh Sheikh, Advocate for
appellants.

Mr. I.J. Damle, APP for respondent no.1/State.

Ms. Nalini Dhoke, Advocate for respondent no.2.

CORAM : M. W. CHANDWANI, J.

DATED : 01/09/2023

ORAL JUDGMENT :

1. Heard finally with the consent of the learned counsel, learned
APP assisted by the learned counsel appearing for the respective parties.

2. **Admit.**

3. The appeal challenges the order dated 4.7.2023 passed in Cri. Bail Appln.110/2023, whereby the learned Special Judge, Darwha, rejected bail application for grant of anticipatory bail preferred by the appellants. The appellants are apprehending arrest in connection with Crime No.332/2023 for the offences punishable under Sections 354, 354-A, 354-D, 341 and 506 read with Section 34 of the Indian Penal Code, Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(2) (va), 3 (1)(w)(i), 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Act of 1989) registered at Police Station, Digras, District Yavatmal.

4. The case of the prosecution is as under:-

The victim, who belongs to Andh ST community, was studying in 12th Standard in Sant Bamanaji Maharaj College, Dehani, Tahsil Digras. She used to attend tuition classes of Chemistry subject near Tahsil office run by Mr. Naikwade Sir. Appellant no.1 used to send gestures on her way to tuition classes. The appellants used to continuously following her and try to talk her. On 2.6.2023 at about 7.00 to 8.00 p.m. when the prosecutrix was taking out her scooter, the

appellants came in front of her and restrained her from proceeding further. Appellant no.1 - Sabir manhandled her and him. The sum and substance of the case is that the appellants used to harass and annoy the prosecutrix. On a complaint of the complainant, aforesaid offences came to be registered against the appellants.

5. Apprehending their arrest, they moved the application for anticipatory bail before the Court of Sessions and Vide its order dated 4th July, 2023 the application for anticipatory bail of the appellants were rejected. The appellants preferred this appeal seeking anticipatory bail having been rejected by the Trial Court.

6. Heard learned counsel for the appellants and learned APP assisted by learned counsel appearing for the victim.

7. It is submitted by learned counsel for appellants that no such incident happened. According to him, the victim under pressure of his family members lodged the complaint. The victim girl has filed affidavit in this regard. Learned APP assisted by counsel for victim did not dispute this position and submitted that in view of affidavit filed by the victim no prima facie case under the Act of 1989 has been made out.

8. The affidavit filed by the victim goes to show that they are in relationship and the complaint has been lodged only because the people of her community opposed her relationship with the appellant no.1.

9. In view of this, no prima facie case is made out under the provisions of the Act of 1989. Accordingly, the appeal succeeds. Hence, I pass the following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 4.7.2023 passed by Special Judge, Darwaha in Cri. Bail Appln.No.110/2023 (Sabir Firoj Garave & another) Vs. State of Maharashtra and another) is set aside.
- (iii) In the event of arrest in Crime No.332/2023 for offences punishable under Sections 354, 354-A, 354-D, 341 and 506 read with Section 34 of the Indian Penal Code, Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(2) (va), 3(1)(w)(i), 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Police Station, Digras, District Yavatmal, the appellants shall be released on bail on their executing PR bond of Rs. 25,000/- with one solvent surety each in the like amount.

(iv) The appellants shall attend concerned Police Station as and when directed by the Investigating Officer and cooperate with the investigation.

(v) The appellants shall not induce, give threat and pressurize any witnesses, who are connected with the alleged crime.

(vi) The Secretary, High Court Legal Services, Sub Committee, Nagpur is directed to quantify fees of the appointed counsel as per Rules.

(vii) Authenticated copy be supplied to the parties.

The appeal stands disposed of accordingly.

(M.W.CHANDWANI, J.)

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