

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

CRIMINAL APPEAL NO. 822 OF 2022

APPELLANT : Roshan s/o Hanif Shah,
Age : 20 years, Occ : Agriculture,
R/o Chandai, Tq. Karanja,
Washim.

V E R S U S

RESPONDENTS : 1. State of Maharashtra
Through Police Station Officer,
Police Station, Karanja Rural,
District Washim.

(Amended as per) 2. X Y Z, (Complainant)
Court's order) Through Police Station,
dtd.16.11.22) Karanja (Gramin), Dist. Washim
and Crime No.0255/2022.

Ms. Payal S. Kaware, Advocate for appellant.
Shri S. S. Doifode, Additional Public Prosecutor for respondent No.1.
Ms. Neerja Chaubey, Advocate (Appointed) for respondent No.2.

CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATED : 13/01/2023.

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

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

2. This is an appeal under Section 14-A the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "SCST Act") raising a challenge to the rejection of

regular bail in Crime No.255/2022 for the offence punishable under Sections 376, 452, 323 & 506 of the Indian Penal Code and Section 3(1)(w)(i)(ii) and 3(2)(va) of the SCST Act.

3. At the instance of report dated 08/06/2022 lodged by the victim aged about 23 years, crime has been registered. The victim girl was residing in small village of Washim District along with her mother and brother. The accused is her brother's friend and was on visiting terms at her house. She had acquaintance with the accused for two years and was in talking terms with him. She alleged that prior to one year from the lodgment of the FIR, in the afternoon, accused entered into her house when she was alone at home and had sexually assaulted her by use of force. The accused also took her photographs in indecent manner and threatened to expose the things. The victim stated that thereafter, temporarily, she was shifted at Hyderabad at her relative's house and when she came back again on 25/05/2022, accused similarly came in her house and assaulted her by use of force, repeated the things. Then, on 01/06/2022, the accused called her at Amravati to which she was reluctant but went there. The accused was about to take her somewhere, but she got escaped, returned and lodged the report.

4. Learned counsel appearing for the appellant would submit that it is a case of love affair between two adults. At the most, it is a case of consensual relationship and nothing more than that. In this regard, it is submitted that though the alleged forcible intercourse was committed prior to one year from the date of FIR, still no report was lodged nor the things were disclosed to anybody. Likewise, second alleged incident dated 25/05/2022 was not exposed. Moreover, it is submitted that though the victim returned from Amravati on 01/06/2022, again there is delay of 8 days in lodging the report. Therefore, it is submitted that the story as narrated by the informant about the aforesaid sexual relations, is false and fabricated.

5. Learned APP as well as learned appointed counsel resisted this appeal by contending that the victim girl has specifically stated about the sexual assault. There was reason for delay as the accused has threatened victim to kill and more particularly to viral her photographs and therefore, there was delay. It is submitted that if the accused is released on bail, either he would repeat the things or pressurize the victim which would put hindrance into fair trial.

6. The accused was arrested in said crime on 16/06/2022 and since then, he is in jail. The police have completed investigation and the report has been filed on 27/07/2022. The investigation paper discloses that the police have seized mobile handset from the accused. The related panchnama shows that no obscene material was seized to be a part of WhatsApp chat, has been made a portion of charge sheet.

7. We have gone through the relative exchange of messages, which prima facie gives impression that it was chat between young couple. For instance, when the accused asked victim to come down probably from Amravati, she replied that "हिम्मत नाही माझी" which conveys absence of compulsion. Pertinent to note that alleged first instance happened prior to one year by use of force, however, there is no disclosure at all. It reveals that after said incident, the victim was sent to relative's house at Hyderabad for which one can read between the lines. The entire prosecution case, if perused, we find that after investigation, further detention is not justifiable, particularly when the victim is quite grown up major girl.

8. In view of that, we are inclined to grant bail by imposing certain conditions to take care of anticipated fear.

Accordingly, we pass the following order :-

- i] The appeal is allowed.
- ii] The impugned order dated 12/10/2022 passed by the Additional Sessions Judge, Link Court, Mangrulpir, Camp at Washim, Dist. Washim in Special Atrocity Case No.55/2022 is hereby quashed and set aside.
- iii] The appellant / accused - Roshan s/o Hanif Shah is released on bail on furnishing P. R. Bond of Rs.25,000/- with one or two sureties in the like amount.
- iv] The appellant / accused - Roshan s/o Hanif Shah shall not enter into village Chandai, Tq. Karanja, Dist. Washim, till the Trial Court records the evidence of victim.
- v] The appellant / accused - Roshan s/o Hanif Shah shall not tamper the prosecution evidence, nor try to contact the victim, in any manner.
- vi] The breach of either of the conditions would give rise to the prosecution to move this Court for cancellation of bail.
- vi] The appeal is disposed of in the above terms.
- vii] The fees of appointed counsel be quantified, as per the Rules.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Choulwar

VITHAL
MAROTRAO
CHOULWAR

Digitally signed by
VITHAL MAROTRAO
CHOULWAR
Date: 2023.02.02
16:14:52 +0530