

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

CRIMINAL APPEAL No. 829 OF 2022.

Suraj s/o Rajendra Bankar,
Age 22 years, Occupation Labour,
resident of Warulwadi, Narayangaon,
Tahsil Junnar, District Pune. ... **APPELLANT.**

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Sahkharkherda,
Tahsil Sindhkhedraja,
District Buldhana.

2.XYZ (Victim) Crime No.63/2022,
Police Station Sahkharkherda,
Tahsil Sindhkhedraja,
District Buldhana. ... **RESPONDENTS.**

Mr. S.V. Deshmukh, Advocate for the Appellant.
Mr. S.A. Ashirgade, Addl.P.P. for Respondent No.1/State.
Ms.K. Deshpande, Advocate [Appointed] for Respondent No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENENZES, JJ.
DATE : JANUARY 16, 2023.

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

Considering the controversy involved in the matter and with consent of the learned Counsel for the parties, the appeal is taken up for final disposal at the stage of admission.

Admit.

2. This is an appeal under Section 14A[1] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act” for short), challenging the order of rejection of regular bail.

3. The appellant/accused has claimed bail on the ground of innocence, false implication, inadequacy of material, absence of knowledge of age of the victim, absence of force or coercion and other usual grounds.

4. The State and learned Counsel appearing for respondent no.2/victim have resisted the appeal by primely contending that the victim girl was below 18 years of age and thus, her consent assumes

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no significance. Moreover, it is argued that the victim was not of understandable age and was unable to know the consequences of her act. It is also argued that the appellant was well aware about the minority of the victim, however, to come out from the clutches of law, he has forged and fabricated victims age related documents and as such, having regard to seriousness of the offence, bail is prayed to be rejected.

5. On 18.03.2022 father of the victim had lodged a report on the basis of which police have registered a crime vide Crime No.63/2022 for the offence punishable under Sections 363, 366, 366[A], 376[2][i]j] of the Indian Penal Code, Sections 4,6 and 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 3[1][w][i][ii], 3[2][v] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. At the relevant time, the victim girl aged 14 years 10 months, was prosecuting her studies in 8th standard. It is the contention of informant that the accused was friend of his son and was in visiting terms at their house. He had acquaintance with the victim, as accused some time stayed at their house. The informant stated that

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on 17.03.2022, in wee hours they have perceived that the victim is missing from the house. On verifying the things, they came to know that the victim has left for Narayangaon along with the accused and thus, report has been lodged.

6. During the course of investigation, the police have recorded statement of various witnesses including the minor victim. The victim has stated about acquaintance with the accused and love relationship. She has stated that the accused expressed his love and desire to marry. The victim girl stated that she herself has forged her documents relating to age i.e. transfer certificate and aadhar card, which she handed over to the accused to facilitate the marriage. In her subsequent statement she stated that both of them have jointly forged the documents. It is the prosecution case that on the intervening night on 17.03.2022 to 18.03.2022 both of them ran away and directly went to Narayangaon, District Pune, where they performed marriage as per rites and rituals.

7. The learned Counsel appearing for the appellant/ accused would submit that the prosecution case nowhere states that either

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the accused used force or coerced the minor for accompanying him. It is pointed out that the first information report itself discloses that the victim girl has telephonically called the accused in the midnight, which was followed by both leaving the place. Moreover, it has been submitted that as per initial statement of the victim, she herself forged both the documents, which she contradicts later. We were taken through third statement of the victim to indicate that school friend of the victim has managed to prepare forged aadhar card. The entire endeavor was to show that the victim was of understandable age and as she was keen to marry, she herself has forged the documents. It is also submitted that the accused did not know about the minority of the victim because the age related documents tendered by the victim shows that she was major.

8. Our attention has been invited to the marriage related document to show that both of them have tendered a forged document to the priest for marriage and also jointly applied to the police that they are major, and therefore, they have married with each other.

9. There can be no denial that since the victim is minor, her consent assumes no significance. However, the Court is required to go through the various related factors while considering the entitlement of bail to the accused. The learned Counsel for the appellant has initially relied on the decision of this Court in case of **Sunil Mahadev Patil .vrs. The State of Maharashtra – 2015 SCC Online Bom 6204**, wherein under similar circumstances, this Court has summarized that though the victim is minor, the Court has to consider other circumstances like love affair, age of the minor victim, the act of violence if any, antecedents of accused, chances of repetition of the crime, likelihood of intimidation and more particularly the age of the accused. Herein the accused is 20 years of age. Police paper clearly indicates that the victim on her own volition of mind took initiative and both of them have eloped. It is a matter of trial to find out whether since inception the accused was knowing about the minority of the victim. Prima facie, two statements are coming before the Court one leans in favour of the accused, stating that the victim herself has fabricated age related documents. The learned Counsel appearing for the appellant has

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relied on some more decisions of this Court wherein under similar circumstances, this Court has exercised judicial discretion in releasing the accused on bail in case of minor prosecutrix. We do now wish to deal in detail as on the basis of facts and circumstances of the case in hand, the entitlement for bail is to be tested.

10. The accused was arrested on 21.03.2022 and after facing custodial interrogation, he is in judicial custody till date. Already investigation is complete and charge sheet has been filed. The accused is permanent resident of Narayangaon, District Pune, whilst the victim girl is resident of Buldhana District, which is far away from Pune. Most of the witnesses are family members, and thus, there appears to be no chances of tampering or pressurizing prosecution witnesses. We have taken note that the accused is just 20 years of age and trial will take considerable time for its disposal. It is not the case that the accused has used force, while committing the act. Moreover, the accused has performed marriage with the victim. Having regard to these circumstances we find that the accused has made out a case for grant of bail. In view of above following order is passed.

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ORDER

- [i] Criminal Appeal is allowed and disposed of.
- [ii] The impugned order dated 23.06.2022 passed by the Special Judge, Mehkar below Exh.10 in Special Case (Atro) No.21/2022 is quashed and set aside. The appellant / accused – Suraj Rajendra Bankar be released on bail in connection with Crime No.63/2022 registered with respondent no.1 Police Station Sahkharkherda, Tahsil Sindhkhedraja, District Buldhana for the offence punishable under Sections 363, 366, 366[A], 376[2][i]j] of the Indian Penal Code, Sections 4,6 and 8 of the Protection of Children from Sexual Offences Act, 2012 and Section 3[1][w][i][ii], 3[2][v] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- [iii] The appellant/accused shall not enter within the territorial jurisdiction of entire Buldhana

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District, except for attending the Court proceedings.

- [iv] The appellant/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.

JUDGE

JUDGE