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

CRIMINAL APPEAL NO.148 OF 2024

Sharukh Khan s/o Shiraj Khan,
Age : 23 Years, Occupation : Labour,
R/o. Kartik Mela Ground Zopadpatti,
Police Station, Mahakal, Ujjain,
Madhya Pradesh.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Sakkardhara, Nagpur, District Nagpur.

2. XYZ victim Crime No.94/2020
dtd. 20.02.2020 registered with
P.S.O. Sakkardhara, Nagpur,
District – Nagpur.

..... RESPONDENTS

Mr. M. V. Rai, Advocate for appellant.

Ms. Swati Kolhe, APP for respondent No.1/State.

Ms. Kirti Deshpande, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01.04.2024

ORAL JUDGMENT :

1. Heard learned Counsel for the appellant, learned APP for the State and learned appointed Counsel for the respondent No.2.

2. By preferring this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant has challenged the order

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dated 05.05.2022 passed by the learned Special Court below Exhibit 5 in Special Case No.639/2021.

3. The appellant has challenged the order dated 05.05.2022 passed by the learned Special Judge, Nagpur in Special Case No.639/2021 by which the bail application of the present appellant in connection with Crime No.94/2020 registered with Police Station Sakkardhara, Nagpur for the offences punishable under Sections 363, 376(2)(j), 376(2)(n) and 109 read with Section 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(r)(s)(w)(i) of the Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'). The crime is registered on the basis of report lodged by the mother of the victim alleging that on the day of incident i.e. on 20.02.2020 her daughter aged about 17 years attended the school and not returned back. On the basis of which missing report was filed. During the investigation, the victim was traced and her statement was recorded from which it reveals that the appellant has promised her for marriage. There was a love affair between her and the appellant and she went along with the appellant. The appellant has subjected her for sexual assault by promising her for marriage. On the basis of said the crime is

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registered against the present appellant under Section 376(2)(j), 376(2)(n) of the Indian Penal Code and under the provisions of the Act of 1989.

4. Learned Counsel Mr. Rai, for the appellant submitted that from the statements of the victim it reveals that at the time of incident, she was 17 years and on the verge of attaining the majority. She went along with the present appellant and there was a physical relationship between them out of the said love affair. She has delivered a child and the child is with the mother of the present appellant. Thus, the family members of the present appellant are maintaining the child and the victim has left his house by keeping the said child behind. He submitted that now, the investigation is completed and charge-sheet is filed. Mere breach of promise is not sufficient to connect the present appellant with the alleged offence. The recitals of the statement of the victim girl nowhere shows that the appellant was knowing that she belongs to the Scheduled Caste and thereafter, there was a love affair between them. In fact, the statement of the victim shows that out of a love affair, she went along with the present appellant and stayed along with him. Considering the fact now his further incarceration is not required and he be released on bail. Learned trial Court has not considered these aspects and wrongly rejected the application.

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5. Learned APP and learned appointed Counsel for the respondent No.2 strongly opposed the application on the ground that the nature of the offence is of a serious one. The victim is minor girl, her consent is not relevant. The appellant is not resident of Maharashtra, if he is released on bail, he would not be available for trial and trial would be held up. In view of that, the order passed by the learned Special Court is legal and proper and no interference is called for.

6. Having heard the learned Counsel for the appellant and learned APP for the State, perused the investigation papers. From the statement of the victim it reveals that out of a love affair, she went along with the present appellant and there was a physical relationship between them. Though, the victim is minor but she is on the verge of attaining the majority. Considering the entire incident has occurred out of a love affair and the victim herself joined the company of the present appellant. Moreover, now the investigation is completed and charge-sheet is filed. The learned trial Court has not considered this aspect that the offence is not committed out of the lust or to fulfill the lust, but whatever happened is out of the love affair and due to the attraction between them. In view of that, the order passed by the learned Special Court deserves to be quashed and set aside. Accordingly, I proceed to pass following order.

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ORDER

(i) The appeal is allowed.

(ii) The order dated 05.05.2022 passed by the learned Special Court in Special Case No.639/2021 below Exhibit 5 is hereby quashed and set aside.

(iii) The appellant **Sharukh Khan s/o Shiraj Khan** shall be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.94/2020 registered with Police Station Sakkardhara, Nagpur for the offences punishable under Sections 363, 376(2)(j), 376(2)(n) and 109 read with Section 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(r)(s)(w)(i) of the Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(iii) The appellant shall attend Sakkardara Police Station once in a month on first Saturday, till the culmination of the trial.

(iv) The appellant shall not leave the jurisdiction of Nagpur District without seeking prior permission of the District Court.

7. The fees of the appointed Counsel be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)