



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

CRIMINAL APPEAL NO.73 OF 2024

Mayur @ Ayub Dildar Sheikh
Aged 24 years,
Occupation – Decoration Work,
R/o. Tukum Major Gate,
Ward No.1, Durgpur,
District Chandrapur
(In Jail)

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Kotwali,
Nagpur
2. XYZ
Police Station Kotwali,
Nagpur,
Crime No.418/2023.

...RESPONDENTS

Mr. R.H. Rawlani, Advocate for the appellant.
Ms S. Haider, APP for the State.
Ms C.S. Bhute, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 30, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 25/01/2024 whereby the Additional Sessions Judge-9 and Special Judge (SC and ST Prevention of Atrocities Act), Nagpur rejected the bail application of the appellant in Special Case No.630/2023.

3. The accusation against the present appellant is on the basis of report lodged on 15/09/2023 by the mother of the victim alleging that on 15/09/2023 her minor daughter aged about 15 years was enticed and abducted by somebody. During investigation, it revealed that minor victim was found along with the accused at Pune and thereafter Vadsa Gadchiroli and then victim was carried at Mahagaon Gondia and subsequently she returned to the home. As per the allegation, minor girl was subjected for sexual assault by the present appellant, and therefore, crime was registered against him under Section 363, 376 and 376(2)(j) of IPC and under Section 3(1)(w), 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

4. After registration of the crime, the appellant approached to the Special Court by filing application vide Exhibit-3 for releasing him on

bail. Learned trial Court has considered that victim is minor and her consent is not relevant and rejected the bail application.

5. Being aggrieved and dissatisfied with the same, present appeal is preferred by the appellant on the ground that there was a love affair between him and the victim. Out of love affair, victim herself has left the house of her parents and joined the company of the appellant. There was physical relationship between them out of the love affair. Now, the investigation is already completed and charge-sheet is filed, further incarceration of the appellant is not required.

6. Learned Counsel for the appellant reiterated the said contention. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 strongly opposed the appeal on the ground that minor victim girl was subjected for sexual assault. Her consent is not relevant and if the appellant is released on bail, he would tamper with the prosecution evidence and prays for rejection of the prayer.

7. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that mother has lodged the report on an allegation that on 15/09/2023 her daughter left the house without informing anybody by taking the amount of Rs.4000/-. After registration of the FIR, initially under Section 363 of the IPC the

search of the victim was carried out and during search victim was found as she returned home. On recording the statement of the victim, it revealed to the Investigating Officer that she got acquaintance with the present appellant and love affair was developed between them and out of love affair she joined the company of the present appellant. Out of the love affair, there was a physical relationship between them and they eloped together and roam at various places. Victim was also referred for the medical examination from which it revealed that there was a physical relationship and sexual activity was done by her. Thus, from the statement of the victim and the other statements it reveals that out of love affair victim has joined the company of the present appellant and there was a physical relationship between them. Thus, considering that the alleged incident has not occurred out of the lust but out of love affair they attracted towards each other and physical relationship was developed between them. Now, investigation is already completed and charge-sheet is filed. Considering the circumstances under which the alleged incident has taken place, further incarceration of the present appellant is not required. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order :

- (i) The appeal is allowed.

(ii) The order dated 25/01/2024 passed by the Additional Sessions Judge-9 and Special Judge (SC and ST Prevention of Atrocities Act), Nagpur in Special Case No.630/2023, is hereby quashed and set aside.

(iii) The appellant – Mayur @ Ayub Dildar Sheikh in connection with Crime No.418/2023 registered at police station Kotwali, Nagpur, District Nagpur for the offence punishable under Sections 363, 376 and 376(2)(j) of IPC and under Section 3(1)(w), 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on executing PR. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall not in any manner communicate with the victim and shall not tamper with the prosecution evidence. The appellant shall not enter into the vicinity of Shivaji Nagar Gate, Nagpur till the culmination of the trial.

(v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) Contravention of any of the conditions would lead to cancellation of bail.

8. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)

**Divya*