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

CRIMINAL APPEAL NO.173 OF 2024

Vishal Waman Raut,
Aged about 27 Years old,
Occupation : Service,
R/o Parkhed, Taluka Khamgaon,
District – Buldhana

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station Khamgaon City.
2. X. Y. Z.
Crime No.557/2022,
Police Station Khamgaon City,
Distt. Buldhana.

.... RESPONDENTS

Mr. S. V. Sirpurkar, Advocate for appellant.
Ms. Soniya Thakur, APP for respondent No.1/State.
Ms. S. K. Phaltankar, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10.06.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this appeal, the appellant has challenged the order dated 03.01.2024 passed by the Special Judge, Khamgaon, District Buldhana rejecting the application of the present appellant for grant of bail under Section 439 of the Code of Criminal Procedure.

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4. The appellant is arrested on 12.11.2022 in connection with Crime No.557/2022 registered at Khamgaon City Police Station, District Buldhana, for the offences punishable under Sections 363, 366-A, 376(2)(n) of the Indian Penal Code, Section 3(1)(w)(i)(ii), 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Section 4 and 6 of the Protection of Children from Sexual Offences Act.

5. As per the allegation, on 05.11.2022 as prosecutrix was not keeping well therefore father of the prosecutrix took her to the hospital. After the Medical Officer has examined the victim, she was admitted in Ward No.3. On 07.11.2022 mother of the prosecutrix send her tiffin and grandmother at Government Hospital, Khamgaon, the prosecutrix had her dinner and called mother that her cousin brother had brought food for her. Thereafter father of the prosecutrix received a phone call around 11.00 p.m. from Government Hospital informing him that his daughter is missing from the hospital. Thereafter, she was searched, but they could not found her daughter and therefore, they lodged the missing report. During the investigation, it revealed that victim went along with the present appellant. She was brought to the Police Station. Her statement was recorded and crime was registered against the present appellant.

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6. Learned Counsel Mr. Sirpurkar for the appellant submitted that from the statement of the victim itself it reveals that there was a love affair between the victim and the present appellant. Therefore, on 08.11.2022 when victim was roaming in the premises of the Government Hospital, appellant met her and she went along with the appellant/accused. They performed the marriage in one temple and stayed by obtaining the room on rent. But, this love affair was opposed by her parents and therefore, she was brought by her parents and due to the pressure of the parents, she gave a statement that present appellant has subjected her for forceful sexual assault. He submitted that considering the statement of the victim and the statement of the house owner where she resided along with the present appellant, sufficiently shows that out of a love affair, they performed the marriage with each other and they obtained the room on rent and stayed there as husband and wife. The appellant is behind bar since the date of his arrest i.e. on 12.11.2022. The investigation is completed. There is no progress in the trial. As investigation is completed and considering the scenario under which the alleged incident has taken place it reveals that out of a love affair, victim has joined the company of the present appellant, therefore his further incarceration is not required. Learned trial Court has not considered the same and erroneously rejected the application

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therefore, the order passed by the learned trial Court rejecting the bail application deserves to be quashed and set aside.

7. Learned APP strongly opposed the said appeal on the ground that victim is 17 years of old, her consent is not relevant. The appellant has subjected her for sexual assault on the promise of marriage. Though investigation is completed and charge-sheet is filed, if the applicant is released on bail, he would tamper the prosecution evidence, in view of that the application deserves to be rejected.

8. Learned Counsel appearing for the victim endorsed the same contention and submitted that as consent of the victim is irrelevant, the contention of the learned Counsel for the appellant cannot be taken into consideration that victim herself joined the company of the present appellant. The appellant has subjected her for sexual assault on the promise of marriage. In view of that, the application deserves to be rejected.

9. After hearing the learned Counsel for the appellant, learned APP for the State and learned appointed Counsel for the victim, perused the entire investigation papers. From the investigation papers, it reveals that as victim was not well therefore, she was admitted in the hospital. From the hospital she got missing and it reveals from her statement that the appellant approached to her and therefore, she went along with

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him. The statement further shows that they have performed marriage by garlanding each other in a temple and they stayed as a husband and wife. Admittedly, the victim is on the verge of attaining the age of majority. She joined the company of the present appellant out of a love affair. It is not the case where the appellant has subjected her for sexual assault out of lust, but it is the love affair between the two teenage which forced them to come together and out of a love affair, the victim joined the company of the present appellant, performed the marriage with him and thereafter, there was a physical relationship between them. Thus, it is apparent that the physical relationship between the present appellant and the victim was out of a love affair. Now, the investigation is already completed and charge-sheet is filed. The learned trial Court has not considered this aspect when considering the bail that it was the victim who willingly joined the company of the present appellant and as far as the forceful sexual assault is concerned, she never complained to anybody till she was brought to the Police Station. Whether the consent was relevant or not is a matter of trial. At this stage, considering the circumstances under which the incident has taken place. The investigation is completed, charge-sheet is filed and further incarceration of the present appellant is not required, the appeal deserves to be allowed. Accordingly, I proceed to following order:

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(i) The criminal appeal is allowed.

(ii) The order dated 03.01.2024 passed by the learned Special Judge, Khamgaon, District Buldana is hereby quashed and set aside.

(iii) The appellant **Vishal Waman Raut** shall be released on bail on executing PR bond of Rs.25,000/- with one solvent surety in the like amount in connection with Crime No.557/2022 registered at Khamgaon City Police Station, District Buldana, for the offences punishable under Sections 363, 366-A, 376(2) (n) of the Indian Penal Code, Section 3(1)(w)(i)(ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Section 4 and 6 of the Protection of Children from Sexual Offences Act.

(iv) The appellant shall not induce, threat or promise any witnesses including the victim by either threatening, promising or inducing her who are acquainted with the facts of the case.

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

11. The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)