



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

CRIMINAL APPEAL NO. 180 OF 2024

APPELLANT: Vaibhav s/o Anil Kude (In Jail)
Aged 23 years, Occu- Driver,
Nandwardhan, Tah. Gondpipri,
District Chandrapur.

...V E R S U S...

RESPONDENTS 1] State of Maharashtra,
through Police Station Ramnagar,
Chandrapur, District Chandrapur.

2] XYZ, victim in crime No. 1383/23,
Police Station Ramnagar, Chandrapur,
District Chandrapur

Mr. R.R.Vyas, counsel for appellant.

Mr. U.R.Phasate, APP for Respondent No.1.

Mr. Amol G. Hunge, counsel (appointed) for respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **08/05/2024**

ORAL JUDGMENT :

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

2. By preferring this appeal, the appellant has
challenged the order dated 13/03/2024 passed by the Special
Judge under the POSCO Act, Chandrapur, whereby the application

of the present appellant for grant of bail is rejected.

3. The appellant was prosecuted for the offence punishable under Sections 376, 376(2)(n), 376(3), 504, 506 of the Indian Penal Code, 1860 read with Sections 4,6,12 of the Protection of Children from Sexual Offences Act, and under Section 3(1)(W)(i)(ii), 3(2)(v) (a) of the Atrocities Act.

4. The accusation against the present appellant is on the basis of report lodged by the victim girl aged about 14 years, who alleged that she got acquaintance with the present appellant, as he is from the same village. He used to visit her house, and on 14/02/2023, he has obtained her photograph and not provided her for the said photographs, and was threatening her that he will make the said photographs viral and was sexually harassing her. As per her allegation, in the month of July-2023, he made a phone call to her and called her at Chandrapur Ram Setu Bridge and also threatened her, if she doesn't turned up, he will make the said photographs viral. Therefore, she went there to meet him and he took her at one place and subjected her forceful sexual assault. On the basis of the said report, police have registered the crime against the present appellant.

5. Learned counsel Mr. R.R.Vyas for the appellant

submitted that as far as the allegation of the sexual assault are concerned, which is not substantiated by the medical report as no external injury is found on the person of the victim. Moreover, on examination of the genitals, no injury is found on the hymen or there was hymenal tear also. He further invited my attention towards the mobile verification panchanama, from which, also reveals that on verification of the mobile phone, no video or photographs are seen in the mobile phone of the present appellant. Thus, he submitted that these two circumstances are sufficiently shows that there was a love affair between the present appellant and the victim but it was opposed by the family members and therefore, she has lodged the false report, due to the pressure of her family member. He further invited my attention towards various statement which shows that, the appellant had been to the house of the relatives alongwith deceased and victim was introduced as his friend. At the relevant time, the victim has not made any grievance that she was not forcefully by the present appellant. Now, investigation is already completed and charge-sheet is already filed, further incarceration of the present appellant is not required. In view of that, the order passed by the Special Court deserves to be quashed and set aside.

6. Learned APP and learned appointed counsel strongly opposed the appeal, on the ground that 14 years girl was subjected for sexual assault by pressurizing her by taking the photographs viral. Thus, prima-facie case is made out against the appellant. In view of that, learned trial Court has rightly rejected the application and no interference is called for.

7. Having heard learned counsel for the appellant, learned APP for the State and learned appointed counsel for the respondent No.2, perused the recitals of the FIR. As far as the allegation of the victim is concerned, that by obtaining her photographs and threatening her, he will make the said photographs viral, she was subjected for sexual assault are not supported or substantiated by the Panchanama. As the recitals of the panchanama specifically shows that, after the verification of the mobile phone of the accused, no photographs or any objectionable material was found in the mobile phone of the present appellant. The victim was also referred for the medical examination, wherein no external injury or even no tear was found in her genitals i.e. hymen. Now, investigation is already completed and charge-sheet is already filed. During the investigation, the investigating officer has recorded the various

statement of the victim, which shows that victim was seen along with present appellant at the house of the relatives of the present appellant, wherein victim has not made any grievance, regarding any force used by the present appellant on her. On the contrary, the statement shows that victim approached to the relatives of the present appellant at her own. Considering the various statement recorded by the investigating officer and the contention of the victim is not substantiated by the medical evidence. Moreover, the investigation is already completed and charge-sheet is filed, further incarceration of the present appellant is not required in view of the above circumstances. The appeal deserves to be allowed. Accordingly, I proceed to pass following order :

- a) The criminal appeal is **allowed**.
- b) The appellant – Vaibhav s/o Anil Kude shall released on bail in connection with Crime No. 1383 /2023, registered with Police Station Ramnagar, Chandrapur for the offence punishable under Sections 376, 376(2) (n), 376(3), 504, 506 of the Indian Penal Code, 1860 read with Sections 4,6,12 of the Protection of Children from Sexual Offences Act, and under Section 3(1)(W)(i)(ii), 3(2)(v) (a) of the Atrocities Act, on

executing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- c) The order passed by the learned learned Special Judge, Chandrapur, dated 13/03/2024 is hereby quashed and set aside.
- d) The appellant shall not enter into the vicinity of Gondpipri, District Chandrapur till culmination of the trial.
- e) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- f) The fees of the appointed counsel be quantified as per the Rules.

The Criminal Appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]