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

CRIMINAL APPEAL NO.214 OF 2024

Ganesh s/o Raju Vaidya,
Aged about 23 Years,
Occupation: Labour,
R/o. Belghata Ward,
in front of Hiranman Deshmukh,
Paoni, Tahsil Paoni,
District Bhandara
(Presently Central Prison at Nagpur) **APPELLANT**

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Umred, District, Nagpur.
2. X.Y.Z./Victim, in Crime
701/2023, registered with
Police Station Umred,
District Nagpur.**RESPONDENTS**

Mr. C. R. Thakur, Advocate for appellant.
Mr. Abhijeet Mate, APP for respondent No.1/State.
Mr. Gourav Gour, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20.06.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

(2)

3. Being aggrieved and dissatisfied with the order dated 18.03.2024 passed by learned Special Judge, under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Additional Sessions Judge-8 passed in Special Case No.87/2024 below Exhibit 2, by which the application of the present appellant for grant of bail is rejected, present appeal is preferred.

4. Learned Counsel for the appellant submitted that the accusation against the present appellant is on the basis of report lodged by the victim alleging that she was studying in 11th standard and prior to that she got acquaintance with the present appellant, friendship was developed between them which resulted into the love affair and said love affair was opposed by her parents. She further alleged that the appellant has taken her on 16.10.2023 and they stayed in one rented room. There was a physical relationship between them which resulted into her pregnancy. As her parents were not supporting their love affair and she had quarreled with the present appellant also, she approached to the Police Station and lodged the report. On the basis of the said report, police have registered the crime against the present appellant

(3)

under Section 376 of the Indian Penal Code and 4 and 6 of the Protection of Children from Sexual Offences Act.

5. After registration of the crime, the appellant filed an application for grant of bail before the learned Special Judge. The learned Special Judge has rejected the application by observing that the victim is below 18 years of age and her consent is not relevant. The learned Special Judge further observed that initially also the victim was kidnapped by the present appellant and again he has enticed her, sexually exploited her. Thus, *prima facie* case is made out and rejected the application.

6. Learned Counsel for the appellant submitted that as far as the statement of the victim is concerned, which clearly shows that there was a love affair between her and present appellant. At her own accord, she joined the company of the present appellant and stayed along with him. She never complain about any forceful sexual assault by the present appellant to anybody. It further reveals from her statement that as there was some misunderstanding between her and the present appellant and therefore, she went in the Government Hostel and started staying there.

(4)

Thus, whatever happened between them is out of a love affair, there was no intention to cheat the victim or subjecting her for sexual assault. Both are of the teenage and attracted towards each other and developed the physical relationship. Now, the investigation is completed, charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, the order passed by the learned Special Judge is erroneous and liable to be set aside and the appellant shall be released on bail.

7. Learned APP strongly opposed the said appeal on the ground that victim is below 18 years of age and therefore, her consent is not relevant. He further submitted initially also the applicant has enticed her and subjected her for sexual assault. On the second occasion, he took her and sexually assault her. She delivered a child and the DNA report shows the present applicant is the biological father of the abortus of the victim. Thus, considering that minor victim girl is subjected for sexual assault, the application deserves to be rejected.

8. Learned Counsel for the victim also endorsed the same contention and submitted that considering the fact

(5)

that minor victim girl was subjected for sexual assault not once but repeatedly, the application deserves to be rejected.

9. After hearing the learned Counsel for the appellant and learned APP for the State and learned Counsel for the respondent No.2. Perused the recitals of the FIR which shows that the victim was aged about 16 years at the time of incident. She got acquaintance with the present appellant, thereafter there was exchange of messages between them. The friendship was resulted into the love affair and said love affair was opposed by the parents of the victim. Her statement in the FIR itself shows that on earlier occasion, she herself left the house at her own accord and joined the company of the present appellant. As far as the subsequent incident dated 16.10.2023 is concerned, which also shows that she at her own accord left the house, on the pretext that she is attending the college and joined the company of the present appellant. Thereafter, they stayed in a rented room and out of the physical attraction regarding each other there was a physical relationship between them, which resulted into pregnancy. The DNA report shows that the victim and the present appellant are biological parents of the abortus of the victim. Thus, considering the

(6)

statement of the victim shows that out of a love affair, they developed relationship between them. It is not the case that present appellant has subjected her for sexual assault out of lust. Considering both are of teenage attracted towards each other out of love the affair, the said case is to be treated differently. Now, considering that investigation is already completed, charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, the order passed by the learned Special Judge deserves to be quashed and set aside. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 18.03.2024 passed by the learned Special Judge and Additional Sessions Judge – 8 in Special Case No.87/2024 below Exhibit 2, rejecting the bail application is quashed and set aside.
- (iii) The appellant **Ganesh s/o Raju Vaidya** shall be released on bail in connection with crime No.701/2023 registered for the offences

(7)

punishable under Section 376 of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act, and under Sections 3(1)(w)(i)(ii) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall not in any manner induce, threat or promise to the victim or any other witnesses by contacting her.

(v) The appellant shall not enter into the vicinity of Bastarwadi Ward Paoni, District Bhandara, till the culmination of the trial.

10. The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)