



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

**CRIMINAL APPEAL NO.239 OF 2024**

Swapnil s/o Ganesh Shende  
Age 23 years, Occupation – Private,  
R/o Asthana Mail, Wadi,  
Tah. & District Nagpur

**...APPELLANT**

**VERSUS**

1. State of Maharashtra,  
through P.S.O. Wadi,  
Nagpur City
2. XYZ in Crime No.661/2023  
P.S. Wadi, District Nagpur City

**...RESPONDENTS**

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Mr. K.Y. Mandpe, Advocate for the appellant.  
Ms S. Thakur, APP for the State.  
Mr. J.A. Deshpande, Advocate (appointed) for respondent No.2.

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**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : JULY 29, 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 02/03/2024 whereby the Additional Sessions Judge-9 and Special Judge under the SC and ST Act rejected the bail application of the appellant bearing Special Case No.66/2024.

3. The appellant came to be arrested on 03/12/2023 in connection with Crime No.661 of 2023 registered at police station Wadi, Nagpur, District Nagpur for the offence punishable under Sections 376, 376(2), 376(2)(i), 376(2)(n) and 376(2)(m) of the Indian Penal Code read with Section 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i)(ii) and 3(2)(v) of the Atrocities Act.

4. The accusation against the present appellant is on the basis of report lodged by the mother of the victim alleging that her daughter is aged about 15 years and 9 months studying in 11<sup>th</sup> standard. In the year 2022 when the victim was residing at Navneet Nagar she got acquaintance with the present appellant and communicating with each other. On 01/12/2023 at about 3.30 p.m. the appellant called her at bus stop and after returning from the college at about 12.30 p.m. victim left the house to go to her friend and then she went to her friend and they both went to the bus stop where the accused also reached, thereafter he took them along with him. It is alleged that he took her at his friend's

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house and subjected her for forceful sexual assault. Due to the incident, she sustained the bleeding injury. On the basis of said report, police have registered the crime against the present appellant.

5. Learned Counsel for the appellant submitted that as far as the recitals of the FIR and the statement of the victim is falsified from the history narrated before the Medical Officer. Initially, the victim was referred for the medical examination wherein she has narrated the history that she is having love affair with the present appellant from last one year and there was a physical relationship between them on multiple occasions. Thus, she submitted that even in the medical case papers the relationship between the present appellant and the victim is shown as he is her boy friend. Thus he submitted that these facts shows that there was a love relationship between the victim and the present applicant and out of love relationship they had a physical relationship also.

6. Thus, he submitted that no *prima facie* case is made out against the present appellant to attract the offence under Section 376 of the IPC. Now, the investigation is already completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, he be released on bail.

7. Learned APP and the learned Counsel for the victim strongly opposed the appeal on the ground that the victim is 16 years of age at the time of incident and her consent is not relevant.

8. She further submitted that if appellant is released on bail he would tamper with the prosecution evidence. Learned Counsel for the victim also supported the contention of the learned APP and prays for rejection of the appeal.

9. I have heard learned Counsel for both the parties. Perused the entire investigation papers from which it reveals that the victim was on the verge of attaining the majority. There was a love affair between her and the present appellant. Due to the said love affair they were having intimate relationship between them. Now it is well settled that when the physical relationship is out of love affair, the said type of cases are to be treated differently. It is not the case wherein the appellant out of lust has subjected the victim for the sexual assault but out of love affair there was a physical relationship between them. Now, the appellant is for a sufficient period behind the bar. Now, the investigation is also completed, further incarceration of the appellant is not required. In view of that, the order passed by the Special Court deserves to be quashed and set aside. Accordingly, I proceed to pass the following order:

(i) The appeal is allowed.

(ii) The order passed by the Additional Sessions Judge-9 and Special Judge under the SC and ST Act in Special Case No.66/2024 dated 02/03/2024 is hereby quashed and set aside.

(iii) The appellant – Swapnil s/o Ganesh Shende in connection with Crime No.661 of 2023 registered at police station Wadi, Nagpur, District Nagpur for the offence punishable under Sections 376, 376(2), 376(2)(i), 376(2)(n) and 376(2)(m) of the Indian Penal Code read with Section 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i)(ii) and 3(2)(v) of the Atrocities Act, be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall not enter into the vicinity of Controlwadi, Ambedkar Nagar, Nagpur till culmination of the trial.

(v) The appellant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

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dated 06/08/2024.

10. The appeal is disposed of accordingly.
11. The fees of the appointed Counsel be quantified as per rules.

**(URMILA JOSHI-PHALKE, J.)**

*\*Divya*