



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

CRIMINAL APPEAL NO. 267 OF 2024

APPELLANT: Ismail Khan Sarwar Khan,
Aged about 75 years, Occu: Labour,
R/o Malkhed, Tah. Warud
District Amravati.

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

RESPONDENTS 1] The State of Maharashtra,
through Police Station Officer,
Police Station Shendurjana Ghat,
Tq. Warud, Distt. Amravati.

2] XYZ (Victim in Crime Bearing
First Information Report No. 0043/2024
dated 29/01/2024, P.S. Shendurjana
Ghat, Tq. Warud, District Amravati.

Mr. T.Deshpande, counsel with Mr. Alpesh Deshmukh, counsel for
appellant.

Mr. K.R.Lule, APP for respondent/State.

Mr. S.P.Deshpande, counsel for the respondent No.2.

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

DATE : **09/07/2024**

ORAL JUDGMENT :

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

2. The appellant came to be arrested on 30/01/2024, in
connection with Crime No. 43/2024 registered with Police Station

Shendurjana Ghat, Tq. Warud, District Amravati for the offence punishable under Section 376-D, 323 of the Indian Penal Code, 1860 and offence under Sections 3(1)(w)(i)(ii), 3(2)(v), 3(2)(va) of the Protection of Children from Sexual Offences Act, 2012.

3. The appeal is preferred against the order passed by the District Judge-1 and Additional Sessions Judge, Warud, District Amravati, under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Criminal Application No. 28/2024, by which the bail application of the present appellant is rejected. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the appellant under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The crime is registered on the basis of the report lodged by the victim girl, aged about 23 years, alleging that on 27/01/2024 the co-accused Mahesh Waghmare came to her house and took her alongwith him, by consent of her mother for attending some Yatra. On 28/01/2024, she asked the co-accused to drop her at the house, and he was taking her on the way, he subjected her for sexual assault, as well as he called the other co-accused also, and all the accused subjected her for sexual assault.

On the basis of the said report, police have registered the crime against the present appellant vide crime No. 43/2024.

5. The appellant approached to District Judge-1 and Additional Sessions Judge, Warud, District Amravati for grant of bail but the same was rejected and therefore, this appeal is preferred.

6. Learned counsel Mr. Tejas Deshpande for the appellant submitted that as far as the involvement of the present appellant is concerned, which is result of misidentity by the victim. The victim has submitted the same before this Court by filing the affidavit. He submitted that as far as the present appellant is concerned, he was not involved in the alleged crime, even his description is not mentioned by the informant. She has only mentioned the name as Ismail, and merely because, the appellant was acquainted with the co-accused, he was implicated in the alleged offence. Now the investigation is already completed and charge-sheet is already filed, on affidavit the victim has stated that she has disclosed the name of the present appellant on misidentity, therefore he be released on bail.

7. Learned APP strongly opposed the said application on

the ground that the allegations are of a serious nature, as the victim was subjected for sexual assault by the present appellant as well as other co-accused. He submitted that, though the investigation is completed and charge-sheet is filed, further incarceration is required, as there is an apprehension of tampering of witnesses.

8. Learned counsel for the victim also stated that the involvement of the applicant is on the basis of misidentity, and the victim has also submitted an affidavit, which is sworn before the Special Executive Magistrate and filed before this Court, contending that all the accused were of age group of 20 to 30 and therefore, under misconception, she has disclosed the name of the present appellant.

9. After hearing learned counsel for the appellant and learned APP for the State as well as counsel for the victim also, perused the investigation papers as far as the allegation in the FIR is concerned, wherein she has also mentioned the name of applicant as Ismail, and alleged that said Ismail has also subjected her for sexual assault. During the investigation, the investigation officer has arrested the present appellant. On the basis of the said statement, except the statement of the victim, there is no other

material to show that the present appellant was involved in the alleged offence. Now, victim herself has stated that she has narrated the name of the present appellant under the misconception and under the misidentity. She submitted that the appellant was not involved and has no objection to release the present appellant on bail, she has stated all these facts on the affidavit.

10. Considering the above facts and circumstances, the investigation is already completed and charge-sheet is already filed, and statement of the victim before the Court on oath that the name of the present appellant is mentioned, on the basis of misconception and misidentity, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order;

- a) The criminal appeal is allowed.
- b) The appellant – Ismail Khan Sarwar Khan shall be released on bail, in connection with Crime No. 43/2024 registered with Police Station Shendurjana Ghat, Tq. Warud, District Amravati for the offence punishable under Section 376-D, 323 of the Indian Penal Code, 1860 and offence under Sections 3(1)(w) (i)(ii), 3(2)(v), 3(2)(va) of the Protection of Children from Sexual Offences Act, 2012, on executing a P.R. bond in the sum of Rs.25,000/- with one solvent

surety in the like amount.

- c) The order passed by the learned District Judge-1 and Additional Sessions Judge, Warud, District Amravati in Criminal Bail Application No. 28/2024 is hereby quashed and set aside.
- d) The appellant shall attend the concerned police station once in a month on first of every month and the investigating officer shall record his presence.
- e) The appellant shall not leave the jurisdiction of the Warud District without prior permission of the Additional Sessions Judge, Warud, District Amravati.
- f) The appellant shall attend the proceedings before the Special Court without seeking any exception unless there are exceptional circumstances.
- g) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- h) The appellant shall not in any manner make any contact with the victim till the culmination of the trial.
- i) Contravention of any of the condition imposed on the present appellant would lead to the cancellation of bail.

Criminal Appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]