



(1)

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

CRIMINAL APPEAL NO.359 OF 2023

Sufiyan Ali s/o Taj Ali Bailim,
Aged about 18 Years,
Occupation : Student,
R/o Amraipura, Arna,
Taluka Arni, District Yavatmal.

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station, Arni,
District Yavatmal.
2. XYZ Victim,
In Crime No.1089/2022,
Registered at Police Station Arni,
District Yavatmal.

.... RESPONDENTS

Mr. Taj M. Malnas, Advocate for appellant.
Mr. A. R. Chutke, APP for respondent No.1/State.
Mr. J. V. Dhakate, Advocate h/f Mr. A. G. Hunge, appointed
Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06.02.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By this appeal, the appellant has challenged the order
passed by the Special Judge under the Scheduled Castes and the

(2)

Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special Case No.19/2023 below Exhibit 16 dated 25.04.2023.

4. The appellant is arrested in connection with Crime No. 1089/2022 registered with Arni Police Station, District Yavatmal for the offences punishable under Sections 363, 366-A, 376(2)(n) read with Section 34 of the Indian Penal Code and under Sections 4, 6, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(2)(va), 3(2)(v), 3(1)(w)(i)(ii) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. The crime is registered on the basis of report lodged by father of the victim girl alleging that on 09.12.2022 he along with other family members slept in his house. In the morning, he woke up and saw that his daughter was not in the house. He searched for her but could not trace her. He received the informant that his daughter was kidnapped by the present appellant on the promise of marriage. On the basis of said report, police have registered the crime.

6. The learned Counsel for the appellant submitted that during the investigation, the Investigating Officer has recorded the statement of the victim, who is aged about 17 years, who stated that there was a love affair between the victim and the present appellant and out of love affair, she joined the company of the appellant. It is

(3)

alleged that present appellant has subjected her for sexual assault against her consent. On the basis of said report, police have registered the crime under Section 376 of the Indian Penal Code.

7. Learned Counsel for the appellant further submitted that from the statement of the victim, it reveals that out of love affair, she has joined the company of the present appellant and there was a physical relationship between them. Subsequently, she has changed her version and attempted to state that she was forced for the sexual assault, but this statement is recorded on 19.12.2022 i.e. approximately after nine days of the incident. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, he be released on bail.

8. Learned APP and learned Counsel for the victim strongly opposed the application on the ground that the victim at the time of incident was 17 years of age. Her consent is not relevant. She was subjected for the forceful sexual assault by the present appellant. If he is released on bail, he will tamper with the prosecution evidence.

9. After hearing the learned Counsel for the appellant and after going through the investigation papers, it reveals that victim has left the house at her own and joined the company of the appellant.

(4)

Admittedly, at the time of incident she was 17 years of age, but it reveals that out of a love affair, they come together and therefore, there was a physical relationship between them. Now, the investigation is completed and charge-sheet is filed. Considering the nature in which the alleged incident has taken place and now, charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed by allowing this appeal.

10. The learned trial Court has not considered this aspect while rejecting the application. In view of that, the order passed by the learned trial Court deserves to be quashed and set aside. Accordingly, I proceed to pass following order.

ORDER

(i) The appeal is allowed.

(ii) The order dated 25.04.2023 passed by the learned Special Court Additional Sessions Judge, Darwha in Special Case No.19/2023 rejecting the bail application of the appellant is quashed and set aside.

(iii) The appellant **Sufiyan Ali s/o Taj Ali Bailim** be released on bail in connection with Crime No.1089/2022 registered with Arni Police Station, District Yavatmal for the offences punishable under Sections 363, 366-A, 376(2)(n) read with Section 34 of the Indian Penal Code and under Sections 4, 6, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(2)(va), 3(2)(v), 3(1)(w)(i)(ii) of Scheduled

(5)

Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall not enter into the vicinity of village Amboda, Taluka Arni, District Yavatmal, till culmination of the trial.

(v) The appellant shall attend the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(vi) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

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

[

(URMIL A JOSHI-PHALKE, J.)