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

CRIMINAL APPEAL NO.328 OF 2024

Ankit s/o Sumadh Vir @ Shahabaj Khan,
Aged 19 Years, Occupation : Student,
R/o. Hatgaon, Near Buddha Vihar,
Tahsil Darwaha, District : Yavatmal,
(Presently at District Prison, Washim)

..... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Mangrulpir,
District Washim.
2. XYZ in C.R. No.57/2024,
Registered at Police Station,
Mangrulpir, District Washim.

.... RESPONDENTS

Mr. R. M. Daga, Counsel for the appellant.
Mr. K. R. Lule, APP for respondent No.1/State.
Ms. Seema P. Dhotre, appointed Counsel for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08.10.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this appeal, the appellant has challenged the order passed by the learned Additional Sessions Judge and Special Judge, Mangrulpir, by which the application for grant of bail, in

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connection with Crime No.57/2024 registered with Police Station, Mangrulpir, District Washim for the offences punishable under Sections 363, 376-D, 366, 341, 323 and 506 of the Indian Penal Code and under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(i), 3(1)(W)(ii), (3)(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

4. The crime is registered on the basis of the report lodged by the mother of the victim girl on an allegation that her daughter aged about 17 years was subjected for sexual assault by two boys and regarding the same, the criminal case is pending. On 27.01.2024 her daughter attended the College to appear for the examination and not return back. Thereafter, they searched for her, but they could not trace her, therefore the report was lodged against the unknown person.

5. During the investigation, the statement of the victim was recorded by the Investigating Officer from which it reveals that she was having love affair with the present appellant and therefore, she left the house and joined the company of the present appellant. On 31.01.2024, when she had been to the Karanja Bus stand at that time, 3 to 4 boys came in an auto rickshaw took her along with them and subjected her for forceful sexual assault. On the basis of

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the said statement, the crime was registered against the present appellant as well as the against unknown person.

6. Learned Counsel Mr. Daga for the appellant submitted that as far as the physical relationship between the present appellant is concerned, it is out of a love affair. He submitted that admittedly, the consent of the victim girl is not relevant, but from her statement it shows that she herself joined the company of the present appellant and there was a physical relationship between them, out of the love affair. Thus, as far as the subsequent event is concerned, wherein the involvement of the present appellant is not revealed. Now the investigation is completed and charge-sheet filed, his further incarceration is not required and therefore, he be released on bail.

7. Learned APP and learned appointed Counsel for the respondent No.2 - victim strongly opposed the prayer on the ground that during the course of the investigation, a detailed statement of the victim was recorded, wherein she has alleged that she was taken by the present appellant and subsequently, she was kidnapped by an unknown person and subjected her for sexual assault.

8. After hearing the learned Counsel for the appellant and learned APP for the State and learned appointed Counsel for the respondent No.2 – victim, perused the investigation papers from

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which it reveals that the statement of the victim was recorded on 01.02.2024 as well as on 28.02.2024 and under Section 164 of the Code of Criminal Procedure from which it reveals that there was a love affair between her and the present appellant, out of the said love affair, she joined the company of the appellant and went along with him. As per the allegation, she was subjected for sexual assault initially by the present appellant and thereafter, she came at Karanja, Mangrulpur and she was standing in the bus stand at that time, some boys came there, abducted her and subjected her for sexual assault. As far as her statement is concerned, it shows that she went along with the present appellant out of the love affair and there was a physical relationship between them, due to the said love affair. As far as the subsequent event of the sexual assault by 3 to 4 persons is concerned, the appellant is not consulted with that. Now the investigation is already completed, charge-sheet is filed. As far as the further incarceration of the present appellant is concerned, which is not required. In view of that, the application deserves to be allowed. Learned trial Court has not considered this aspect and wrongly rejected the application. Considering all these aspects, the appeal deserves to be allowed. In view of that I proceed to pass following order:

ORDER

- (i) The appeal is allowed.

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(ii) The order passed by the learned Special Judge below Exh.29 in Special Atrocity Case No.25/2024 is hereby quashed and set aside.

(iii) The appellant **Ankit s/o Sumadh Vir @ Shahabaj Khan** shall be released on bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.57/2024 registered with Police Station, Mangrulpir, District Washim for the offences punishable under Sections 363, 376-D, 366, 341, 323 and 506 of the Indian Penal Code and under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(i), 3(1)(W)(ii), (3)(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

(iv) The appellant shall not enter into the vicinity of Manglurpir District Washim, till the culmination of the trial. Except attending the proceeding before the learned Special Court.

(v) The appellant shall not induce, threat or promise the witnesses including victim physically or by way of electronic media.

(vi) The appellant shall attend the proceeding before the Special Court without seeking exemption unless there are exceptional circumstances.

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

(URMIL A JOSHI-PHALKE, J.)