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

CRIMINAL APPEAL NO.375 OF 2024

Gopal s/o Manohar Wankhede,
Age 25 Years, Occupation : Labourer,
R/o Gupta, Taluka Manora,
District Washim.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through its Police Station Officer,
Police Station, Manora,
District Washim.
2. XYZ Victim,
[Crime no.193/2024]
Through Police Station Manora,
District Washim.

.... RESPONDENTS

Mr. T. S. Deshpande, Counsel for the appellant.
Mr. A. R. Chutke, APP for respondent No.1/State.
Mr. R. S. Bhalerao, appointed Counsel for respondent
No.2.

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

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By this appeal, the appellant has challenged the order passed
by the learned Special Judge and Additional Sessions Judge,

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Mangrulpir in Criminal Bail Application No.68/2024 by which the application of the present appellant for grant bail is rejected.

4. The crime is registered on the basis of report lodged by the mother of the victim on an allegation that her daughter aged about 15 years has left the house and not returned back on 01.03.2024. It is alleged that the appellant was in contact with the victim and on the promise of marriage, he has kidnapped her. On the basis of the said report, police have registered the crime initially, under Section 363 of the Indian Penal Code. During the investigation, the statement of the victim was recorded, wherein she has alleged that prior to one year, she got acquaintance with the present appellant and present appellant has provided her mobile phone and was communicating with her. As her parents disliked her communication with the present appellant, they obtained the mobile phone from her thereafter, the appellant has again provided her mobile phone and she was communicating with him. On 01.03.2024, the appellant threatened her and took her along with him and thereafter, she travelled along with him at Digras, Digras to Pusad and thereafter at Pune, wherein she resided along with him in rented premises. There was a physical relationship between them during those days. After recording the statement of the victim, the crime was registered under Section 376 of the Indian Penal Code.

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5. The appellant approached the learned Special Court for grant of bail. Learned Special Court has rejected the application considering that the victim is 15 years of age and her consent is not relevant. Being aggrieved with the same, present appeal is preferred by the appellant on the ground that there was a love relationship between the victim and the present appellant, and out of that love relationship, there was a physical relationship. 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.

6. Learned APP and learned appointed Counsel for the respondent No.2 strongly opposed the said application on the ground that the victim is only 14 years and 6 months of age, her consent is not relevant. The *prima facie* case is made out against the present appellant, as he has subjected her for forceful sexual assault by threatening her. The apprehension was raised that if he is released on bail, he would tamper with the prosecution evidence. In view of that, the order passed by the learned Special Court deserves to be maintained.

7. After hearing the learned Counsel for the appellant and learned APP for the State and learned appointed Counsel for the respondent No.2, perused the investigation papers from which it reveals that there was an acquaintance between the victim and the

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present appellant. They were communicating with each other which resulted into their love relationship. From her statement, it reveals that initially, the mobile phone which was given by the present appellant was snatched by her parents, but again she was provided with the mobile phone by the present appellant and she was communicating with him. Though she travelled along with him at various places, she has not made any complaint about using some force by the present appellant. Thus, it is apparent that out of the love affairs, she joined the company of the present appellant. There is no dispute as to the fact that the consent of the victim is not relevant, but considering that out of a love affair, she went along with him and stayed with him. Though she travelled by the public transport, she has not made a complaint about any threatening by the present appellant or subjecting her for sexual assault. It seems that the alleged incident of sexual relationship is out of the attraction between the two youngsters and it is not the case that appellant has subjected the victim for sexual assault out of lust. Considering the fact that though charge-sheet is filed and the trial would take its own time for its final disposal. Considering the fact that the circumstances under which the alleged incident took place, further incarceration of the present appellant is not required and no purpose will be served by keeping him behind bar. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

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ORDER

- (i) The appeal is allowed.
- (ii) The order passed by the learned Special Court in Criminal Bail Application No.68/2024 rejecting the application, is hereby quashed and set aside.
- (iii) The appellant **Gopal Manohar Wankhede** shall be released on bail on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount in connection with Crime No.193/2024 registered with Police Station, Manora, District Washim for the offence punishable under Sections 376(2)(n)(i), 363, 506 of the Indian Penal Code, under Sections 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Section 4 of the Protection of Children from Sexual Offences Act.
- (iv) The appellant shall not enter into the vicinity of Madina Nagar, Manora, Taluka Manora, District Washim, till culmination of the trial.
- (v) The appellant shall furnish his address of residence after releasing him on bail and shall furnish the names of his two relatives and their addresses before the trial Court.
- (vi) The appellant shall not induce, threat or promise any witnesses either physically or by electronic media who are acquainted with facts of the present case.

8. The fees of the appointed Counsel for respondent No.2 be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)