



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

CRIMINAL APPEAL NO.376 OF 2024

Asif Khan Roshan Khan Pathan
Aged about 35 years, Occupation – Labour,
R/o Near Noori Masjid, Station File,
Wardha

...APPELLANT

VERSUS

1. The State of Maharashtra,
through P.S.O. P.S. Malegaon,
Washim
2. XYZ (Minor victim)
in Crime No.120/2024
P.S.O. P.S. Malegaon,
Washim

...RESPONDENTS

Mr. M.N. Ali, Advocate for the appellant.
Ms S. Dhote, APP for the State.
Mr. A.G. Hunge, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : AUGUST 30, 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 24/05/2024 whereby the Additional Sessions Judge, Washim rejected the bail application of the appellant bearing Criminal Bail Application No.86/2024.

3. The crime is registered against the present appellant on the basis of report lodged by the victim aged about 16 years and 11 months alleging that in the month of January, 2024 she was travelling by train from Akola to Wardha. At that time, one person approached to her and disclosed his name as Asif Khan. He has also handed over the one chit having mobile number written on it and asked her to call on that number.

4. When she reached at Wardha, she has called from her mother's mobile phone to the present appellant and the present appellant asked her to come along with him. Accordingly, she joined the company of the present appellant. It is alleged that the present appellant has outraged her modesty. On the basis of said report, police have registered the crime against the present appellant.

5. Learned Counsel for the appellant submitted that from the recitals of the FIR it reveals that the victim herself joined the company of the present appellant and the allegation is that she was taken from the custody of her legal guardian, is not substantiated either by the

statement of the victim or the statement of any other witnesses. As far as the allegation regarding the outraging of the modesty is concerned, the false allegations are levelled against the present appellant only to implicate him in a serious crime. Now, the investigation is completed and charge-sheet is filed, further incarceration of the appellant is not required. While considering the bail application of the appellant learned Special Court has not considered the same. In view of that, the appeal be allowed by quashing and setting aside the order passed by the Special Judge.

6. Learned APP and learned Counsel for respondent No.2 strongly opposed the prayer on the ground that there is a *prima facie* case against the present appellant as he has exchanged his mobile number and thereafter induced her lured her and insisted her to join his company and thereafter outraged her modesty. As far as the consent of the victim is concerned being she is minor it is not relevant. In view of that, the appeal deserves to be dismissed being devoid of merits.

7. I have heard learned Counsel for both the parties. Perused the entire investigation papers from which it reveals that it was the victim who communicated with the present appellant and thereafter present appellant asked her to come at Ridhora phata. Accordingly, she approached to the appellant and then went along with him. Admittedly,

the investigation is completed and charge-sheet is filed. As far as the further incarceration of the present appellant is concerned which is not required. Learned Special Court ought to have considered that the investigation is completed and further incarceration of the present appellant is not required considering the circumstances under which the alleged incident has taken place. In view of that, the order passed by the Special Court requires to be quashed and set aside. Hence, the appeal deserves to be allowed by imposing certain conditions. Accordingly, I have proceed to pass following order:

- (i) The appeal is allowed.
- (ii) The order dated 24/05/2024 passed by the Additional Sessions Judge, Washim in Criminal Bail Application No.86/2024, is hereby quashed and set aside.
- (iii) The appellant – Asif Khan Roshan Khan Pathan in connection with Crime No.120/2024 registered with police station Malegaon, District Washim for the offence punishable under Sections 354, 354-A, 363, 366, 504, 506 and 507 of the Indian Penal Code, Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

Act, 1989, be released on bail on executing PR. 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 village Varangi, Taluka Malegaon, District Washim till the culmination of the trial.

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

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

(vii) The contravention of any of the conditions would lead to cancellation of bail.

8. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)