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

CRIMINAL APPEAL NO.388 OF 2024

Mangesh s/o Vitthal Bodade,
Aged about 23 Years,
Occupation : Labourer,
R/o Parturda, Tahsil Sangrampur,
District Buldhana.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Officer-in-Charge of
Police Station, Shegaon,
Tehsil Kamgaon, District Buldhana.

2. XYZ
Crime No.81/2024,
through Police Station Officer,
Police Station Shegaon,
Buldhana.

.... RESPONDENTS

Mr. Aniket Sawal, Counsel h/f Mr. H. R. Gadhia, Counsel for
the appellant.

Mr. Nitin Autkar, APP for respondent No.1/State.

Ms. Radha M. Mishra, appointed Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19.10.2024

ORAL JUDGMENT :

1. **Admit.**

2. Heard finally with the consent of learned Counsel
appearing for the parties.

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3. By this appeal, the appellant has challenged the order passed by the learned Special Judge, Khamgaon, passed below Exhibit – 4 in Special Case No.37/2024, by which the application of the present appellant for grant of bail is rejected.

4. The appellant came to be arrested on 17/02/2024 in connection with Crime No.81/2024 registered with Police Station Shegaon City, District Buldhana for the offence punishable under Sections 376(2)(I), 376(2)(n), 376(3)(D), 376(D)(A) read with Section 34 of the Indian Penal Code, 1860; Sections 3(C), 3(D), 4, 5 (I), 6 of the Protection of Children from Sexual Offences Act; Sections 3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'Atrocities Act').

5. The crime is registered on the basis of a report lodged by the victim girl, aged about 14 years and four months, alleging that her parents are doing the labour work. On 10/02/2024, as she has attended the school and her parents took her to Bhuskuti Mala, they were busy with their work, at the relevant time, one boy of a fair complexion wearing a sky-blue shirt called her and subjected her for forceful sexual assault by giving her ten rupee note. It is further alleged that thereafter on 13/02/2024, the two boys approached her and subjected her for sexual assault. On the basis of the said report, police have registered the crime.

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6. Heard learned Counsel for the appellant, who submitted that as far as the involvement of the present appellant is concerned, it is merely on suspicion. The test identification parade is held after one month, after the incident. As far as the allegations are concerned, ten rupee note was given to her, the mobile number written on the said note was of the said co-accused, not of the present appellant. The medical evidence nowhere substantiates the allegation as hymen is shown to be intact. Now the investigation is already completed and charge-sheet is filed. Considering the allegation against the present appellant, he be released on bail.

7. Learned APP and learned appointed Counsel for the respondent No.2 - victim strongly opposed the said appeal on the basis that the statement of the victim and during identification parade, she has identified the accused which sufficiently shows his involvement in the alleged offence, in view of that, the appeal deserves to be dismissed.

8. After hearing learned Counsel for the appellant, learned APP for the State and learned appointed Counsel for the respondent No.2 - victim, perused the investigation papers from which it reveals the allegation is that she was subjected for sexual assault on multiple occasions. The medical evidence shows that hymen is shown to be intact, there were no injuries found on the person of the victim. Admittedly, the injuries are not *sine qua non* to attract

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the provisions of 376 of the Indian Penal Code, but considering the fact that the investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. The appeal deserves to be allowed by setting aside order passed by the learned Special Court. In view of that I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order passed by the Special Judge, Khamgaon below Exhibit 4 in Special Case No.37/2024, rejecting the bail application is hereby quashed and set aside.
- (iii) The appellant **Mangesh s/o Vitthal Bodade** shall be released on bail, in connection with Crime No.81/2024 registered with Police Station Shegaon City, District Buldhana for the offence punishable under Sections 376(2)(I), 376(2)(n), 376(3)(D), 376(D)(A) read with Section 34 of the Indian Penal Code, 1860; Sections 3(C), 3(D), 4, 5 (I), 6 of the Protection of Children from Sexual Offences Act; Sections 3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (v) The appellant shall not enter into the vicinity of village Chandola, Taluka Daryapur, District Amravati and also Taluka Shegaon, District Buldhana, till the culmination of the trial.
- (vi) The appellant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- (vii) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the

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present case either physically or through electronic media.

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

10. The criminal appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.