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

CRIMINAL APPEAL NO.605 OF 2024

Dinesh Fakira Mohurle,
Age 30 Years, Occupation: Labour,
R/o. Mangaladevi,
Taluka Ner, District Yavatmal.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Ner, Taluka Ner,
District Yavatmal.

2. XYZ
Victim in crime No.857/023,
Police Station, Ner,
Taluka Ner, District Yavatmal.

.... RESPONDENTS

Mr. Latif Mirza, Counsel for the appellant.
Mr. S. V. Narale, APP for respondent No.1/State.
Ms. Jayanti A. Deshpande, appointed Counsel for
respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22.10.2024

ORAL JUDGMENT :

Criminal Application (APPA) No.1060/2024

1. The application is for condonation of delay.
2. Learned Counsel for the appellant submitted that initially, he has filed the application inadvertently, and therefore, the delay of 180 days was caused to file this appeal.

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3. Considering the reasons mentioned in the application, the delay is condoned.

4. The application is disposed of.

CRIMINAL APPEAL NO.605 OF 2024

1. **Admit.**

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

3. By this appeal, the appellant has challenged the order passed by the learned Special Judge and Additional Sessions Judge, Yavatmal, by which the application of the present appellant for grant of bail is rejected.

4. Heard learned Counsel for the appellant who submitted that the crime is registered on the basis of report lodged by the father of the victim girl on an allegation that his daughter aged about 17 years was studying in 11th Standard. On 30.10.2023, on the pretext of attending the college, she left the house and not returned back. Thereafter, he searched, but he could not trace her. On inquiry with his niece, it revealed to him that she was communicating with the present appellant and present appellant has taken her at Surat. Therefore, he approached the Police Station

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and lodged the report. During the investigation, the victim was traced as she was found along with the present appellant. Her statement was recorded, and on the basis of the statement, it reveals that the present appellant on the promise of marriage took her along with him and subjected her for forceful sexual assault. On the basis of the said, the crime was registered under Section 376 of the Indian Penal Code.

5. Learned Counsel for the appellant submitted that appellant and the victim both got acquaintance through Instagram which resulted into their love affair and out of the love affair, there was a physical relationship between them. But as the victim was found along with the present appellant, due to the pressure of her parents, she gave a false statement. He relied upon the photographs which shows that the victim was staying along with the appellant happily and there was no displeasure shown by her. Thus, considering the same, the investigation is completed and charge-sheet is already 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 - victim strongly opposed the said application and submitted that the consent of the victim is not relevant, forcefully victim was taken by the present appellant and subjected her for the forceful sexual assault. Considering the manner in which the

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alleged incident has taken place, the application for grant of bail deserves to be rejected.

7. After hearing the learned Counsel for the appellant, learned APP for the State and learned appointed Counsel for the non-applicant No.2 - victim, perused the entire investigation papers, from which it reveals that the victim and the appellant got acquaintance with each other through Instagram. They have exchanged various messages, WhatsApp as well as Instagram messages, from which it reveals that there was a love affair between them. Photographs on record also sufficiently shows that victim was staying along with him happily and no displeasure appears to be there from the photographs. The statement of the victim shows that there was a love affair between them. Thus, considering the said statement it reveals that out of a love affair and attraction towards each other two young persons came together and a physical relationship was developed between them. Considering the statement of the victim girl and considering the fact that now the investigation is completed, charge-sheet is filed, further incarceration of the present appellant is not required, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The appeal is allowed.

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(ii) The order passed by the Special Judge in Criminal Bail Application No.542/2023 rejecting the bail application is hereby quashed and set aside.

(iii) The appellant **Dinesh Fakira Mohurle** shall be released on bail in connection with Crime No.857/2023 registered with Police Station Ner, District Yavatmal for the offences punishable under Sections 363, 366-A, 376(n) of the Indian Penal Code, under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(2)(v), 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall not enter into the vicinity of village Pimpri Mukhatyarpur, Taluka Ner, District Yavatmal, till 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 Special Court without seeking any exemption unless there are exceptional circumstances.

8. The fees of the appointed Counsel be quantified as per Rules.
9. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)