



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

CRIMINAL APPEAL NO. 662 OF 2024

APPELLANT: Mohammad Faizan Sagir Ahmad,
Age 26 years, Occupation: Private,
R/o Near Jama Masjid, Mominpura,
Nagpur.

...V E R S U S...

RESPONDENTS 1. State of Maharashtra
through PSO, Police Station Sitabuldi,
Nagpur.

2. Victim (XYZ),
Crime No. 81/2021 (FIR No. 331/2021)
P.S. Sitabuldi, Nagpur.

Mr. Kanak Mandpe, counsel h/f Mr. Parag M. Ukey, counsel for
appellant.

Nitin Autkar, APP for respondent/State.

Mr. Aditya S. Pande, counsel (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 03/12/2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. Heard finally with consent of learned counsel appearing for the parties.

4. By preferring this appeal, the appellant has challenged the order passed by the learned Additional Sessions Judge, Nagpur, rejecting the application of the present appellant for grant of bail.

5. The appellant is arrested on 01/08/2021, in connection with Crime No. 331/2021 registered at Police Station Sitabuldi, Nagpur for the offences punishable under Sections 354(A), 366(A), 376(D), 328, 201, 506, 34 of the Indian Penal Code, 1860, read with Sections 3(2)(v), 3(2)(v)(a), 3(1)(w)(i) (ii), 3(1)(A) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 2015, and Sections 4,6, 8, 12 of Prevention of Child from Sexual Offences Act.

6. The crime is registered on the basis of the report lodged by the victim, aged about 16 years and 9 months, who belongs to the Scheduled Caste. It is alleged that there was a quarrel between her and her sister-in-law on 29/7/2021, and therefore she left her house in anger. Thereafter, she got

acquaintance with one boy, namely Tushar. It is further alleged that she was taken by 3 to 4 persons, including the co-accused Sana. The said Sana has also called his friends, and thereafter she was subjected for the forceful sexual assault by all the co-accused. As far as the present appellant is concerned, it is alleged that the present appellant took her, as well as other co-accused, in his auto rickshaw and provided them one room, wherein the alleged offence was committed. On the basis of the said report, police have registered the crime against the present appellant and other co-accused.

7. Heard learned counsel for the appellant, who submitted that as far as the role of the present appellant is concerned, it is only with the extent of providing the shelter. There is no allegation against him as to the sexual assault by him. Now, the investigation is completed and the charge sheet is already filed, further incarceration of the appellant is not required. In view of that, he be released on bail.

8. Learned APP and learned counsel for the victim strongly opposed the said application on the ground that the victim was subjected for the forceful sexual assault by 3 to 4 other

co-accused. The victim is a mentally unsound girl. She left the house in anguish, and thereafter, she was subjected for the forceful sexual assault. Considering the nature of the offence, and prima-facie case is made out against the present appellant also, even his presence is sufficient to attract the provisions of Section 376 (d) of the Indian Penal Code, 1860. Thus, considering the material collected during the investigation and the nature of the offence, the learned Special Court has rightly rejected the application.

9. After hearing both sides and on perusal of the investigation papers, it reveals that the victim is a mentally unsound girl. There was some dispute between her and her sister-in-law; therefore, in anger, she left the house, and she came into contact with the other co-accused, who took her into a room and subjected her for forceful sexual assault. Not only this, he has called his friends also, and thereafter, she was subjected for forceful sexual assault. As far as the present appellant is concerned, who knowingly took all the accused and the victim in one room and provided them the room wherein the alleged offence of gang rape is committed. Thus, his presence also is

sufficient to show his involvement in the serious offence.

10. Considering the above facts, the learned Special Court has rightly rejected the application. I do not find any reasons to interfere with the same. In view of that, the appeal deserves to be dismissed. Accordingly, I proceed to pass the following order.

- a] The criminal appeal is dismissed.
- b] The fees of the appointed counsel be quantified as per Rule.

[URMILA JOSHI-PHALKE, J.]