



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

CRIMINAL APPEAL NO.526 OF 2024

Deepak s/o Nagorav Shevane
Age 26 years,
Occupation – Labour,
R/o Kumbhargao, Tah. Lakhad,
District Amravati

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Akot Police Station,
Tah. Akot, District Akola
2. XYZ (Crime No.105/2023)
through Police Station Officer,
Akot Police Station,
Tah. Akot Rural, District Akola

...RESPONDENTS

Mr. Mohd. A. Mohd. Salim, Advocate for the appellant.
Mrs. K. Bhondge, A.P.P. for the State.
Ms C.S. Bhute, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : DECEMBER 19, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. By preferring this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'), the appellant has challenged the order dated 18/01/2024 passed by the learned Additional Sessions Judge, Akot, District Akola in Special Case No.43/2023 by which the application of the present appellant for grant of bail was rejected.

3. Learned Counsel for the appellant submitted that initially the crime was registered on the basis of report lodged by the father of the victim girl against the unknown person alleging that on 26/03/2023 his daughter/victim left the house and not returned back. Though he searched for her but she could not be traced, and therefore, he lodged report against the unknown person. During investigation, the victim was found along with the present appellant, therefore, her statement was recorded and from her statement it reveals that there was love affair between her and the present appellant, and therefore, she left the company of her parents and joined the company of the present appellant. There was a physical relationship developed between them out of love affair. Her statement under Section 164 was also recorded. Being she was below 18 years of age, the crime was registered against the present appellant under Section 376(2)(n), 376(3) of the Indian Penal Code and under Sections 3, 4, 5(j)(ii), 6 of the Protection of

Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i)(ii), 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. After registration of the crime, the appellant approached to the Special Court for grant of bail but the Special Court has rejected the application observing that the consent of the victim is not relevant. Hence, this appeal. He submitted that the victim was on the verge of attaining the majority. Out of love affair she herself left the house and joined the company of the present appellant. The physical relationship was developed between them out of love affair. Now, investigation is completed, charge-sheet is filed, further incarceration of the appellant is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the appeal and submitted that the DNA report is yet to be received. Victim is below 16 years of age. Her consent is not relevant. There is every apprehension that if appellant is released on bail he would tamper with the prosecution evidence. Hence, the appeal deserves to be dismissed.

5. Learned Counsel for respondent No.2 endorsed the same contention and submitted that the appeal deserves be dismissed.

6. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that after registration of the crime the statement of the victim was recorded by the Investigating Officer from which it reveals that there was a love affair between her and the present appellant, therefore, at her own accord she left the house and joined the company of the present appellant. Her statement under Section 164 was also recorded wherein also she reiterated the said contention. Her medical examination was carried out which substantiates the fact that she was subjected for sexual assault. It further reveals that the physical relationship resulted into her pregnancy. The DNA report is yet to be received. On perusal of the entire investigation papers it reveals that the victim who is 15 years and 7 months and the appellant is 26 years old boy and there was a love relationship developed between them. Out of love affair both have physical relationship. Victim admittedly is below 18 years of age but on the verge of attaining the majority. It is not the case wherein the victim was subjected for the sexual assault out of lust but out of love affair there was a physical relationship developed between them. Now, considering the fact that the investigation is completed and charge-sheet is filed, further incarceration of the appellant is not required. In view of that, the appeal deserves to be allowed by setting aside the order passed by the

Special Judge, Akot, District Akola. Accordingly, I proceed to pass following order:

- (i) The appeal is allowed.
- (ii) The order dated 18/01/2024 passed by the Additional Sessions Judge, Akot, District Akola in Special Case No.43/2023, is hereby quashed and set aside.
- (iii) The appellant – Deepak s/o Nagorav Shevane in connection with Crime No.105/2023 registered with Police Station, Akot, District Akola for the offences punishable under Sections 363, 370, 366(A), 376(2)(n) and 376(3) of the Indian Penal Code and Sections 3, 4, 5(j)(ii), 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(w)(i)(ii), 3(2)(v) and 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/- with one solvent surety in the like amount.
- (iv) The appellant shall not enter into the vicinity of village Akolkhed, Taluka Akot, District Akola 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 including victim either personally or by way of electronic media.

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

7. The contravention of any of the condition would lead to the cancellation of bail.

8. The appeal is disposed of.

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

(URMILA JOSHI-PHALKE, J.)

**Divya*