



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

CRIMINAL APPEAL NO.439 OF 2024

(Vitthal Dynaneshwar Dakhare Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.M. Lodha, Advocate for appellant.
Mr. N. Autkar, A.PP for the State.
Mr. Y.A. Kullarwar, Advocate (appointed) for respondent No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- OCTOBER 22, 2024.

Present appeal is preferred under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant has challenged the order passed by the Special Judge, Kelapur in Criminal Bail Application No.64/2024 by which the application of the present appellant for grant of bail was rejected.

2. The crime is registered on the basis of report lodged by the victim aged about 50 years on an allegation that she is staying along with her two sons namely Bhaskar and Ravi who are working as labourers in agriculture land at Wani. Out of the two sons, Ravi was working with one Chordiya Sonar. Said Ravi had disclosed that quarrel has been taken place between him and the accountant i.e. the present appellant. It is further alleged that on 28.06.2023 when the victim was alone in her house, at the relevant time, the present appellant and his

servant Kapil came and enquired about her son Ravi. The victim showed her inability to give whereabouts of Ravi, at that time she was threatened to be kidnapped and put in the lockup in the Police Station. The victim was then enquired. She was brought at auto point and thereafter the appellant has obtained the auto-rickshaw, she was asked to sit in the said auto-rickshaw. Thereafter she was abducted. She was also administered the stupefying substance forcefully and she was subjected for the sexual assault by the present appellant as well as the other co-accused. On the basis of the said report, police have registered the crime against the present appellant and the other co-accused.

3. Learned Counsel for the appellant submitted that initial bail application was withdrawn by him as this Court has shown the disinclination. Now, there is change in circumstance as adduced the evidence. Material witnesses are already examined. During the cross-examination of the victim the case of the prosecution is falsified. The trial is progressed with the snail pace. Considering the same, the appellant cannot be kept behind bar for an indefinite period. In view of that, he be released on bail.

4. Learned APP and learned Counsel for respondent No.2 strongly opposed the appeal on the ground that the statement of the victim and her deposition before the Court sufficiently shows his involvement in the

alleged offence. They submitted that merely because the material witnesses are examined and formal witnesses are remained is not sufficient ground to grant bail to the present appellant. They have submitted that there is no change in circumstances. In view of that, the appeal deserves to be rejected.

5. The present application is filed on the ground that there is a change in circumstances. As far as present case is concerned as the material witnesses are examined and the formal witnesses are remained. As to the issue regarding the subsequent application the Hon'ble Apex Court in the case of ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and anr. [(2004) 7 SCC 528]*** wherein the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. In the case of ***Lt Col Prasad Shrikant Purohit vs The State Of Maharashtra [2018 (11) SCC 458]*** the Hon'ble Apex Court held that we must note that though an accused has a right to make successive

applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.

6. In the light of the above observations of the Hon'ble Apex Court if the earlier order passed by this Court is considered it shows that after going through the papers the disinclination was shown to grant bail, and therefore, the application was withdrawn.

7. Coming to the ground raised by the present appellant in the appeal is that the material witnesses are examined and now formal witnesses are remained to be examined. The applicant is arrested on 30/06/2023. the trial is already underway and four witnesses are already examined. The trial Court itself has observed that the trial is to be disposed of expeditiously, therefore, the directions to expedite the trial are not required. As far as the involvement of the present appellant in the alleged crime is concerned which reveals from the statement as well as the evidence of the victim. The allegations against the present appellant and the other co-accused is of a sexual assault on a woman of 50 years old and the case is of a gang rape. Considering the gravity of the offence, at this stage, no case is made out for grant of bail. In view of that, the application deserves to be rejected.

8. The appeal is rejected accordingly.
9. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*