



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

CRIMINAL APPEAL NO.682 OF 2023

Ganesh s/o Pralhad Shejole
Aged about 55 years,
Occupation – Agriculturist
R/o Gaulkhed, Tq. Shegaon,
District Buldhana

...APPELLANT

VERSUS

1. State of Maharashtra,
through P.S.O.,
Police Station Shegaon Rural,
Tq. Shegaon, District Buldhana
2. XYZ in Crime No.72/2023
P.S.O., P.S. Shegaon Rural,
Tq. Shegaon, District Buldhana

...RESPONDENTS

Mr. A.S. Mardikar, Sr. Advocate a/b Mr. V.R. Deshpande, Advocate
for the appellant.
Ms M.A. Barabde, APP for the State.
Mr. C.R. Sharma, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JANUARY 30, 2024.

ORAL JUDGMENT :

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

2. By this appeal, the appellant has challenged the order passed by the Additional Sessions Judge, Khamgaon in Special Case No.53/2023 by which the application of the appellant for grant of bail is rejected. This appeal is preferred by the appellant for grant of bail and for quashing and setting aside the order.

3. The appellant came to be arrested on 17/03/2023 in connection with Crime No.72/2023 registered at police station Shegaon Rural, Taluka Shegaon, District Buldhana for the offence punishable under Section 376(1), 376(3), 354-D, 342 and 506 of the Indian Penal Code and Sections 4 and 12 of Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(W)(i), 3(1)(W)(ii), 3(2)(va), 3(2)(v) and 3(1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. The accusation against the present appellant is on the basis of report lodged by the victim alleging that on 14/02/2023 when victim was passing through the road, the appellant called her near his house and pulled her inside the house, administered the sedative against her will and subjected her for forcible sexual intercourse. It is further alleged that after the incident, she was threatened that if she discloses the incident to somebody, he would not let her sister and aunt get married and would destroy their life. It is further alleged that on 28/02/2023,

the appellant again threatened the victim that if she discloses the incident to anybody he would again subject her for the sexual assault similar to the earlier incident. Thereafter the victim has disclosed the incident to her mother and FIR came to be lodged, on the basis of which the crime is registered.

5. Heard learned Senior Counsel Mr. Mardikar for the appellant. He submitted that with a false and concocted story, the appellant is implicated in the alleged offence. Learned trial Court had not considered that there is an inordinate delay in lodging the FIR and the said delay is not explained either by the victim or by the prosecution. As far as the investigation part is concerned which is already over and the charge-sheet is filed. He further submitted that due to the political rivalry, the present appellant is implicated as present appellant has contested the Gram-panchayat election wherein the family members of the victim have lost the election and the appellant was elected. Thus, considering the reason behind the implication is the political rivalry. Now, the investigation is completed and charge-sheet is filed. Further incarceration of the appellant is not required. The trial will take its own time for its disposal. In view of that the appellant be released on bail and setting aside the order passed by the trial Court.

6. *Per contra*, learned Additional Public Prosecutor strongly opposed the prayer for grant of bail of the appellant on the ground that the statement of the victim supported by the medical report which shows that the victim was subjected for the sexual assault. Thus, *prima facie* case is made out against the present appellant. If appellant is released on bail there is every likelihood of tampering of the prosecution evidence as the appellant is also from the same village. In view of that, the appeal deserves to be dismissed.

7. Learned Counsel appearing for respondent No.2 endorsed the same contention and submitted that the victim has explained the delay in her FIR itself which shows that as she was threatened to the extent that if she disclosed the incident, her entire life would be ruined, she has not disclosed the said incident which appears to be a probable explanation. If the appellant is released on bail, he will tamper with the prosecution evidence. In view of that, the appeal is meritless and liable to be dismissed.

8. Having heard learned Senior Counsel for the appellant, learned Additional Public Prosecutor for the State and learned Counsel for respondent No.2 and perused the report. As per the allegation in the report on 14/02/2023 at about 12.30 p.m. when she had been to the medical shop she was called by the present appellant and pulled inside

the house and was subjected for forcible sexual intercourse. After lodging of the FIR she was immediately referred to the medical examination. During the medical examination, it revealed that hymen is found to be ruptured as well as fourchette is also found to be intercepted. Thus, the contention of the informant is substantiated by the medical evidence. Though alleged incident has taken place on 14/02/2023, the FIR is lodged after one month i.e. on 16/03/2023. As per the explanation given by the informant is that on 28/02/2023 again she was followed by the present appellant and was threatened, therefore, she has called her mother. Her mother came on 15/03/2023, she disclosed the said incident to her mother and thereafter they approached to the police station and lodged the report. Whether this explanation is probable or not is a matter of evidence, at this stage, considering that the investigation is completed and charge-sheet is filed, there is no criminal antecedents and only apprehension raised by respondent No.2 and the State is that if appellant is released on bail he will tamper with the prosecution evidence. Considering the fact and the investigation papers and the apprehension raised by respondent No.2, the appeal deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

- (i) The appeal is allowed.

(ii) The order passed by the Additional Sessions Judge, Khamgaon in Special Case No.53/2023 rejecting the bail application of the appellant is hereby quashed and set aside.

(iii) In the event of arrest, the appellant - Ganesh s/o Pralhad Shejole in connection with Crime No.72/2023 registered at police station Shegaon Rural, Taluka Shegaon, District Buldhana for the offence punishable under Section 376(1), 376(3), 354-D, 342 and 506 of the Indian Penal Code and Sections 4 and 12 of Protection of Children from Sexual Offences Act, 2012 and Sections 3(1)(W)(i), 3(1)(W)(ii), 3(2)(va), 3(2)(v) and 3(1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall not in any manner contact the victim and shall not enter into the vicinity of village Gaulkhed, Taluka Shegaon, District Buldhana till the culmination of the trial.

(v) The appellant shall attend the proceeding before the trial Court regularly and shall not seek any exception unless there are exceptional circumstances.

(vi) The appellant shall attend concerned Police Station as and when required for the investigation purpose.

(vii) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(viii) The appellant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

9. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*