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

CRIMINAL APPEAL NO.603 OF 2024

Chandan s/o Ramesh Gade,
Aged about 22 Years,
Occupation: Labour,
R/o Satgaon Bhusari,
Tahsil Chikhli,
District Buldhana

..... APPELLANT

// VERSUS //

1. The State of Maharashtra,
through Police Station Officer,
Police Station, Raipur,
District Buldhana.

2. XYZ/Informant
In crime No.190/2024,
Police Station, Raipur,
District Buldhana.

.... RESPONDENTS

Mr. N. B. Kalwaghe, Counsel for the appellant.
Ms. Shamshi Hader, APP for respondent No.1/State.
Mr. S. D. Borkute, Counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21.11.2024

ORAL JUDGMENT :

1. **Admit.**

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

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3. The present appeal is preferred under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order passed by the learned Additional Sessions Judge, Buldhana, rejecting the application of the appellant for grant of bail.

4. The appellant is arrested on 16.09.2024 in connection with Crime No.190/2024 registered under Section 137(2) initially, and subsequently under Section 64(1)(2) of the Bharatiya Nyaya Sanhita, 2023 and under Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act and under Sections 3(1)(w)(i)(ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Learned Counsel for the appellant submitted that the crime is registered on the basis of report lodged by the mother of the victim on an allegation that the victim has left the house on the pretext of attending the college and not returned back. Though they have searched for her, but her whereabouts are not traced. On the basis of the said report, police have registered the crime.

6. During the investigation, the victim was found along with the present appellant, therefore present appellant was arrested. He submitted that there was a love affair between the victim and the present appellant and therefore, she eloped with the present appellant and they travelled at various places by public

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transport. She has not made any complaint as to the forceful sexual assault or regarding the kidnapping by the present appellant. He submitted that thereafter, due to the pressure of the parents, she has given a false statement. The history narrated by her before the Medical Officer also reflects that there was a love affair between her and the present appellant. The present appellant is also aged about 22 years which sufficiently shows that the two teenagers fall in love with each other and out of love and affection, they proceed together. As far as the custodial interrogation is concerned, which is now not required as investigation practically completed. In view of that, he be released on bail.

7. Learned APP for the State and learned Counsel for the respondent No.2 strongly opposed the prayer and submitted that consent of the victim is not relevant though the investigation is completed and there is a likelihood of tampering of the witnesses. Considering the same, the appeal deserves to be dismissed.

8. After hearing both the sides and on perusal of the investigation papers, it reveals that initially, the FIR was lodged on an allegation that the victim has left the house and not returned back and some unknown person had kidnapped. During the investigation, she was found in custody of the present appellant. She was immediately referred for the medical examination. Before the Medical Officer, she narrated the history that she is in

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relationship with the present appellant from the last one year and they eloped together. Admittedly, the victim resided along with the present appellant in rented premises and though she was having an opportunity to make her grievances, she has not disclose the said fact to anybody. It further reveals from her statement that she travelled by public transport and there was an opportunity for her to disclose the said incident to the co-passengers, but she has not disclosed the said fact. From the statement and the history narrated before the Medical Officer, sufficiently shows that out of a love affair, two teenagers came together and left the parent's house and stayed together at some unknown place. Considering the fact that the alleged incident has taken place out of a love affair and the investigation is practically completed which is not considered by the learned Special Court while rejecting the application. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 08.10.2024 passed by the learned Additional Sessions Judge, Buldhana in Regular Bail Application No.377/2024, is hereby quashed and set aside.
- (iii) The appellant **Chandan s/o Ramesh Gade** shall be released on bail in connection with Crime No.190/2024 registered under Section 137(2) and 64(1)(2) of the Bharatiya Nyaya Sanhita, 2023 and under Section 4, 8 and 12 of the Protection of Children from Sexual Offences Act and

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under Section 3(1)(w)(i)(ii), 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, 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 Satgaon Bhusari, Taluka Chikhli, District Buldhana, till the culmination of the trial.

(v) The appellant shall not induce, threat or promise any witnesses who acquainted with the facts of the case either physically or through electronic media.

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

9. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.