



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

CRIMINAL APPEAL NO. 773 OF 2023

APPELLANT :

(Original accused No.1.)

Roshan s/o Bhausahab Gawai,
Aged about : 22 years,
Occupation : Labour,
R/o Shelad Tqluka Balapur,
District - Akola - Maharashtra.

V E R S U S

RESPONDENTS :

(Orig. Complainant)

1. State of Maharashtra
Through Police Station Officer,
Police Station Balapur,
District Akola.
2. Victim Name ABC,
Crime No.10/2023,
Punishable u/s 376, 376-(2) (N),
376(3), 354, 354-A, 452, 506 of IPC,
r/w section 3,4,5,6,7,8 of POSCO Act
and Section 3(2)(v-a), (3)(2), 3 (V),
3(1)(w)(i), 3(1)(w)(ii).
Police Station - Balapur,
District Akola,
Victim Since Minor represented
through natural guardian mother.

Shri Bhavin K. Suchak with Shri Kamal H. Anandani, Advocates for
appellant.

Ms. Sneha Dhote, Additional Public Prosecutor for respondent No.1.

Shri Amol G. Hunge, Advocate (Appointed) for respondent No.2.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 26/02/2024.

ORAL JUDGMENT :

1. **Admit.** Heard finally with the consent of learned
counsel appearing for the parties.

2. By this appeal, the appellant has challenged the order passed by Additional Sessions Judge, Akola in Sessions Case No.27/2023 below Exh.15 by which the application of the present appellant for grant of bail is rejected.

3. The appellant is prosecuted for the offence punishable under Sections 376, 376(2)(n)(f), 376(3), 354, 354-A, 452, 506 r/w Section 34 of the Indian Penal Code and under Sections 4, 5, 6, 7, 8 and 9(n) of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(2) (va), 3(2) (v), 3(1)(w)(i)(ii) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989 (For short, “the Act of 1989”).

4. The crime is registered on the basis of report lodged by the victim alleging that the present appellant is her husband and residing in her neighbourhood. She is aged about 15 years as her date of birth is 10/03/2007. In July, 2022, when she was alone in the house, present appellant came in her house on the pretext of obtaining mobile number of her maternal uncle and subjected her for sexual assault. She further alleged that the other co-accused Shuddhodhan and Dnyaneshwar Shelke have also time to time subjected her for sexual assault. Due to repeated sexual assaults on her, she was pregnant and samples were obtained by the Medical

Officer which have forwarded for DNA examination. On the basis of said report, police have registered a crime against the present appellant and other co-accused.

5. Learned counsel for the appellant submitted that false allegations are levelled against the present appellant, except the statement of the victim, there is no other material to show that present appellant is involved in the said crime. Nobody has witnessed the present appellant at the house of the victim. He further submitted that DNA report negates the allegation as the appellant is exonerated during DNA analysis as a biological father of the child. As per the DNA report, co-accused Dnyaneshwar Shelke is a biological father of the child delivered by the victim. Now, investigation is completed and charge sheet is filed. Further custodial interrogation of the appellant is not required. No purpose would be served by keeping the present appellant behind bar. He further submitted that the co-accused Subham and Shuddhodhan is already released on bail on the same set of evidence. In view of that, appellant is also entitled to be released on bail on the ground of parity. However, the Trial Court has not considered the same and rejected the application erroneously. Thus, the order passed by the Trial Court is erroneous and illegal and is liable to be set aside.

6. Learned APP strongly opposed the application on the ground that the statement of the victim is sufficient to show the involvement of the present appellant in the alleged offence, merely because DNA report exonerates the present appellant is not sufficient to show that he is not involved in the crime. As the victim is standing at the higher pedestal than accomplice, her statement is sufficient to show involvement of the appellant. In view of that, application deserves to be rejected.

7. Learned counsel for the victim also endorsed the said contention and submitted that application deserves to be rejected.

8. Having heard learned counsel for the appellant and learned APP for the State, perused the investigation papers. The FIR is lodged on the basis of statement of the victim who alleged that it is the present appellant who is her uncle subjected her for sexual assault till 2023. Admittedly, till lodging of the FIR, she has not disclosed the said fact to anyone. She alleged against the three persons who subjected her for sexual assault and her statement under Section 164 is also recorded by the Magistrate wherein she again reiterated the said contentions. The samples collected by the Medical Officer of the foetus as well as victim and the present appellant and other co-accused are forwarded for DNA analysis.

The DNA analysis report shows that the co-accused Dnyaneshwar Shelke is a biological father of the child delivered by the victim. Admittedly, there is substance in the contention of the learned APP that merely because the DNA analysis exonerates the present appellant is not sufficient to show that he is not involved in the crime. The statement of the victim is at the higher pedestal than accomplice. However, considering that now, the investigation is completed and charge sheet is filed. Further incarceration of the present appellant is not required. The apprehension raised by the learned counsel for the victim can be taken into consideration by imposing certain conditions on the present appellant. 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 appellant - **Roshan s/o Bhausaheb Gawai** be released on bail in connection with Crime No.10/2023 registered under Sections 376, 376(2)(n)(f), 376(3), 354, 354-A, 452, 506 r/w Section 34 of the Indian Penal Code and under Sections 4, 5, 6, 7, 8 and 9(n) of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(2) (va), 3(2) (v), 3(1)(w)(i)(ii) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond of Rs.25,000/- with one solvent surety in the like amount.

iii] The impugned order passed by Additional Sessions Judge, Akola in Sessions Case No.27/2023 rejecting the application for grant of bail is quashed and set aside.

iv] The appellant shall not enter into vicinity of village Shelad, Tq. Balapur, Dist. Akola, till culmination of the trial.

v] The appellant shall also attend the Police Station, Balapur, Dist. Akola, till culmination of the trial and Investigating Officer shall record his presence.

vi] The appellant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.

9. The appeal is disposed of.

10. The fees of the appointed counsel for respondent No.2 be quantified as per the Rules.

[URMILA JOSHI-PHALKE, J.]