



(1)

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

CRIMINAL APPEAL NO.788 OF 2023

Shankar s/o Talikram Kevat,
Aged about 19 Years, Occupation : Student,
R/o. Neara Z. P. School, Bothali,
District Gondia.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
through Police Station Officer,
Police Station, Goregaon,
Tahsil Goregaon, District Gondia.
2. XYZ the victim in Crime No.427/2023
of Police Station, Goregaon, Gondia.

.... RESPONDENTS

Mr. Bhushan Sachdev, Advocate h/f Mr. S. G. Karmarkar, Advocate
for appellant.
Mr. A. G. Mate, APP for respondent No.1/State.
Ms. Anuprita S. Mishrikotkar, appointed Advocate for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 06.02.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By this appeal, the appellant has challenged the order
dated 08.11.2023 passed by the Special Court under the Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities) Act in

(2)

Special Case No.143/2023, below Exhibit 3 by which, the application of the appellant for grant of bail is rejected.

4. The appellant is arrested on 10.08.2023 in connection with Crime No.427/2023 registered with Goregaon Police Station, District Gondia for the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code and under Section 3(2)(v), 3(2)(va), 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

5. The accusation against the present appellant is on the basis of report lodged by father of the victim on an allegation that on 25.07.2023 he had been to Goregaon, at that time he received a phone call of his neighbour that his daughter has left the house on a two wheeler. Thereafter, he searched for her daughter, but he could not trace her, therefore, he lodged a report against the unknown person. During the investigation, the Investigating Officer searched the victim and recorded her statement, from which, it revealed that she went along with the present appellant. On the basis of her statement, the investigating agency has registered the offence under Section 376 of the Indian Penal Code.

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6. Learned Counsel for the appellant submitted that from the statement of the victim, it reveals that she was on the verge of majority and got acquaintance with the present appellant, which resulted into a love affair. Out of a love affair, she joined the company of the present appellant and left her house at her own accord and stayed along with him for 15 days. During this period, out of a love affair, there was a physical relationship. Now, the investigation is completed and charge-sheet is filed. Considering the circumstances under which the alleged incident has taken place, further incarceration of the present appellant is not required. He further submitted that the learned trial Court has not considered this aspect that the investigation is completed and charge-sheet is filed and the alleged incident is out of a love affair. In view of that, the order passed by the learned trial Court deserves to be quashed and set aside.

7. Per contra, learned APP and appointed Counsel for the respondent No.2 – victim submitted that the victim at the time of incident was 17 years of age, her consent is not relevant. In view of that, the application of the present appellant praying bail deserves to be rejected. It is further submitted that if the appellant is released on bail, he will tamper with the prosecution evidence.

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8. I have perused the order passed by the learned trial Court. The learned trial Court has assigned the reason that the statement of the victim girl shows that she went along with the appellant and there was a physical relationship between them. Her consent is not relevant and therefore, rejected the application. On perusal of the entire investigation papers, it reveals that there was a love affair between the victim and the present appellant and out of the love affair, she went along with the present appellant and stayed along with him for 15 days. During this period, she has never complained regarding the forceful sexual assault by the present appellant, though she was having an opportunity. Thus, the material sufficiently shows that out of a love affair there was a physical relationship between them. Considering the investigation is now completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, the order passed by the learned trial Court deserves to be quashed and set aside. In view of that, I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 08.11.2023 passed by the learned trial Court in Special Case No.143/2023 below Exhibit 3 rejecting the bail application is quashed and set aside.

(5)

(iii) The appellant **Shankar s/o Talikram Kevat** be released on bail in connection with Crime No.427/2023 registered with Goregaon Police Station, District Gondia for the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code and Sections 3(2)(v), 3(2)(va), 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, 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 Bagalbandh Post Kurhadi, till culmination of the trial.

(v) The appellant shall attend the trial Court regularly without seeking any examination unless there are exceptional circumstances.

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

9. The fees of the appointed Counsel for respondent No.2 be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)