



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

CRIMINAL APPEAL NO. 369 OF 2024

APPELLANT: Umesh s/o Ramesh Shirekar,
Aged about 24 years, Occ: Labour,
R/o Ekalara, Tq. Dist. Akola.

...VERSUS...

RESPONDENTS

1. The State of Maharashtra,
through Police Station Officer,
Shegaon City, Tq. Khamgaon,
District Buldhana.
2. XYZ (Victim), in Crime No. 81/2024,
Through Police Station Officer,
Shegaon City, Tq. Khamgaon
District Buldhana.

Mr. S.V. Sirpurkar, counsel for the appellant.

Mr. K.R. Lule, APP for respondent/State.

Mr. Aniruddha Anantkrushna, counsel (appointed) for respondent
No.2

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 09/10/2024

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 the Special Judge, Khamgaon, passed below

Exhibit-6, by which the application of the present appellant for grant of bail is rejected.

3. The appellant came to be arrested on 17/02/2024 in connection with Crime No. 81/2024 registered with Police Station Shegaon City, District Buldhana for the offence punishable under Sections 376(2)(I), 376(2)(n), 376(3)(D), 376(D)(A) read with Section 34 of the Indian Penal Code, 1860; Sections 3(C), 3(D), 4, 5 (L), 6 of the Protection of Children from Sexual Offences Act; Section 3(1)(w)(i)(ii), 3(2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to 'Atrocities Act').

4. The crime is registered on the basis of a report lodged by the victim girl, aged about 14 years and four months, alleging that her parents are doing the labor work. On 10/02/2024, as she has attended the school and her parents took her to Bhuskuti Mala, they were busy with their work. At the relevant time, one boy of a fair complexion wearing a sky-blue shirt called her and subjected her for forceful sexual assault by giving her 10 rupee note. She further alleged that on 13/02/2024, the two boys approached her and sexually assaulted her. On the basis of the said report, police have registered the crime against the present applicant.

5. Learned counsel, Mr. S.V. Sirpurkar for the appellant, who submitted that as far as the involvement of the present appellant is concerned, the FIR is lodged against the unknown person. The test identification parade is held on

05/03/2024, i.e., approximately one month after the incident. He submitted that, as far as the allegations are concerned, she was subjected for sexual assault on multiple occasions, which is not substantiated by the medical evidence as the hymen is shown to be intact. Now the investigation is already completed and charge-sheet is filed. He further submitted that as far as the allegation is concerned, which is only to the extent of the sexual harassment and not sexual assault, because the allegation is in the nature that the applicant and the other co-accused forcefully asked her to masturbate his penis. He submitted that now investigation is already completed and charge-sheet is already filed, further incarceration of the applicant is not required. In view of that, he be released on bail.

6. Learned APP strongly opposed the said appeal and submitted that the victim is only 14 years of age and was subjected for sexual assault. The identity of the present applicant is revealed during the identification period. Considering the prima-facie case against the present appellant, the application deserves to be rejected.

7. Learned appointed counsel also reiterate the said contention.

8. After hearing learned counsel for the appellant and learned APP for the State perused the investigation papers. As far as the allegation is concerned, it is alleged that she was subjected for sexual assault on multiple occasions. The medical evidence shows that hymen is shown to be intact, there were no

injuries found on the person of the victim. The statements of the witnesses are also recorded. As far as the medical evidence is concerned, which does not substantiate the contention of the present informant, the FIR is lodged against an unknown person. The T.I. parade is held after one month of the incident. Admittedly, whether the offence is made out under Sections 4 or 8 of the Protection of Children from Sexual Offences Act is a matter of evidence. At this stage, considering the prima-facie material, the involvement of the present applicant appears to be doubtful. In view of that and considering the investigation is completed and charge-sheet is filed, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order;

- a] The appeal is **allowed**.
- b] The order passed by Special Judge, Khamgaon below Exhibit 6 in Special Case No. 37/2024, rejecting the bail application is hereby quashed and set aside.
- c] The appellant shall be released on bail, Crime No. 81/2024 registered with Police Station Shegaon City, District Buldhana for the offence punishable under Sections 376(2)(I), 376(2)(n), 376(3)(D), 376(D)(A) read with Section 34 of the Indian Penal Code, 1860; Sections 3(C), 3(D), 4, 5 (L), 6 of the Protection of Children from Sexual Offences Act; Section

3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- d] The appellant shall not enter into the vicinity of village Chandola, Taluka Daryapur District Amravati and also Tah. Shegaon District Buldhana till the culmination of the trial.
- e] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- f] The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- g] The fees of the appointed counsel be quantified as per Rule.

The criminal appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]