



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

CRIMINAL APPEAL (APEAL) NO. 520 OF 2024

Santosh @ Chhotya Dayaldas Dahare,
Aged : 32 Yrs., Occu.: Agriculturist,
R/o. Kotjambhora, Tah. Salekasa,
District Gondia
(Presently at District Prison,
Bhandara)

.... APPELLANT

// V E R S U S //

1 **The State of Maharashtra,**
Through Police Station officer,
Police Station Salekasa,
District Gondia

2 **X.Y.Z.,**
through PSO P.S. Salekasa,
C.R. No. 75/2024
District Gondia

... RESPONDENTS

Mr R. M. Daga, Advocate for the appellant
Mr Neeraj Jawade, APP for respondent No.1/State
Ms Aastha Sharma, Advocate (appointed) for respondent No.2

CORAM : G. A. SANAP, J.
DATE: 21/02/2025

OR A L J U D G M E N T :

1. Heard.
2. **ADMIT.** Taken up for final disposal with consent
of learned Advocates for the parties.

3. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Atrocities Act') against the order dated 30.08.2024 passed by the learned District Judge-2 and Additional Sessions Judge, Gondia (for short 'the learned Judge'), whereby the learned Judge rejected the bail application made by the accused/appellant in connection with crime No75 of 2024 registered with police station Salekas, Gondia.

4. The learned Advocate for the appellant would submit that the victim is major. The evidence compiled in the charge-sheet shows that it was a consensual act. The learned Advocate would submit that when the brother of the victim saw them together the report of the incident was lodged. The learned Advocate took me through the medical evidence and pointed out that the medical officer has recorded a finding that she is not mentally ill. It has been stated that she is of average intelligence. The learned Advocate would submit that the appellant has been in jail from the date of his arrest. The charge

sheet has been filed. The trial may take a time for completion. In the teeth of the evidence compiled in the charge sheet, further incarceration of the appellant is not necessary. His further incarceration may amount to a pre-trial conviction. It is submitted that he is ready to abide by the condition that may be imposed by the Court.

5. Learned APP and learned Advocate appearing for the victim submitted that on two occasions the accused committed forcible sexual intercourse with the victim. She was threatened with dire consequences in case she did not succumb to his pressure. The victim did not disclose the incident to her parents. The learned Advocate would submit that the victim is mentally imbalanced and the accused took advantage of this situation. It is further submitted that the accused and the victim are resident of the same village and if the accused is enlarged on bail then he would threaten the victim and other witnesses. There is a possibility of tampering with the prosecution evidence.

6. I have perused the record and proceedings. The incident in question occurred in the bathroom of the school. On 24.03.2024 at about 9:30 p.m., the victim girl and the accused were spotted in the bathroom by the informant, who is the brother of the victim. The victim, on being confronted with the incident, narrated that earlier on 21.03.2024 the accused forcibly committed intercourse with her. She further informed that the accused had threatened to kill her in case the act committed by him was disclosed. The victim was examined by the medical officer. The medical officer noticed a minor hymen tear. The victim on the date of the incident was above 18 years of age. The medical officer in his report has not confirmed the contention of the informant that the victim is mentally ill. He has stated that she is of average intelligence. It has come on record that in the night the victim was roaming on the road. She went missing. The informant and other family members took her search and at that time her brother/informant found her in the company of the accused in bathroom of the school.

7. The victim is twenty years old. The victim was directed to personally remain present before the Court. She attended the court. I have noticed her physical condition. After considering the report of the medical officer, it may not be possible at this stage to record any finding as to the mental condition of the victim. However, fact remains that the medical examination revealed that she is not mentally ill. The victim did not disclose the first incident to her family members, which according to the informant occurred at the very same place. The charge-sheet has been filed. The accused has been languishing in jail. There is no progress in the trial. The completion of the trial in the near future is not possible. In my view, considering the peculiar facts of this case and the material compiled in the charge-sheet, the bail cannot be denied to the accused. As far as the merits of the matter are concerned, the same cannot be gone into at this stage. If the merits of the matter are gone into at this stage then the finding recorded, one way or the other, is likely to prejudice either the prosecution or the accused. Suffice to state that case in question, is a fit case to

exercise discretion in favour of the accused. The apprehension *put forth* by the learned APP and the Advocate for the victim can be taken care of by imposing appropriate conditions including the condition that he shall not enter the village Salekasa till the completion of the trial. As such, the application is deserves to be allowed. Hence, the following order:

- i] The criminal appeal is allowed.
- ii] The order dated 30.08.2024 passed by the learned District Judge-2 and Additional Sessions Judge, Gondia is quashed and set aside.
- iii] Applicant- Santosh @ Chhotya Dayaldas Dahare be released on bail in Crime No.75 of 2024, registered with Police Station Salekasa for the offences punishable under Sections 376, 376(2)(l)(n), 506 of the Indian Penal Code read with Sections 3(2)(v), 3(1)(w)(i)(ii), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Attrocities) Act, 1989 on his

furnishing P.R. Bond in the sum of Rs. 25,000/-
(Rupees Twenty Five Thousand only) with one
surety in the like amount.

iv] The appellant shall not in any way
tamper with the prosecution evidence.

v] The appellant shall not pressurize or
threaten the prosecution witnesses.

vi] The appellant shall not enter the village
Salekasa, District Gondia till the completion of the
trial.

vii] The appellant shall co-operate the
investigating officer.

8. The learned appointed advocate for respondent
No.2 be paid professional fees as per rules.

9. The criminal appeal stands **disposed of**, accordingly.
Pending applications, if any, also stand disposed of.

(G. A. SANAP, J.)