



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

CRIMINAL APPEAL No.701 OF 2024

Nishant Balaji Thavkar,
Age 20 years,
Occupation : Labour,
R/o. Ward No.4, at Pst Khat,
Tq. Mauda, Distt. Nagpur : APPELLANT

...VERSUS...

1. State of Maharashtra,
Through Police Station Officer,
Police Station Aroli, Distt. Nagpur.
2. Victim XYZ,
In Crime No.218/2024,
Through PSO Aroli, Distt. Nagpur. : RESPONDENTS

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Mr. D.P. Mankar, Advocate for Appellant.
Mr. M.K. Pathan, Addl. Public Prosecutor for Respondent No.1.
Ms. Parita Lakhani, Advocate for Respondent No.2/Victim (Appointed).
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CORAM : URMILA JOSHI-PHALKE, J.
DATE : 20th MARCH, 2025.

ORAL JUDGMENT :

1. Heard. Admit.
2. By preferring this appeal the appellant has challenged the order passed by the Additional Sessions Judge-13 and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act passed in Criminal Bail Application No.2274/2024 rejecting the bail

application of the present appellant.

3. The appellant is arraigned as an accused in Crime No.218/2024, registered with Police Station Aroli, District Nagpur for the offence punishable under Sections 376(1), 376(3) of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The crime is registered on the basis of report lodged by the victim girl aged about 16 years on an allegations that she got acquaintance with the present appellant and love affair was developed between them. During her acquaintance and as the love affair developed between them the physical relationship was also developed which resulted into her pregnancy and subsequently present appellant denied to perform marry with her. On the basis of the said report Police have registered the crime against the present appellant.

4. Heard learned counsel for the appellant, who submitted that out of love affair, physical relationship was developed between them. As far as the statement of the victim is concerned nowhere states that there was a promise of marriage. Now, investigation is completed and charge-sheet has been filed. Considering the fact that out of love affair physical relationship was developed and the crime is not committed out of lust. As the investigation is already completed and charge-sheet is already filed,

further incarceration of the present appellant is not required. In view of that, he be released on bail by quashing and setting the order of the Special Judge.

5. Learned A.P.P. strongly opposed the same on the ground that victim is below 18 years of age, her consent is not relevant. Under the misconception of facts the present appellant has seduced her for the sexual intercourse and, therefore, the appeal deserves to be rejected.

6. Learned counsel for the victim also endorsed the same contention and submitted that the consent of the victim is not relevant.

7. After hearing both sides and on perusal of the investigation papers it reveals that the victim was at the age of 16 at the relevant time and there was a love affair between the victim and the present appellant. Out of love affair, physical relationship is developed between them. Thus, the recitals of the F.I.R. and the investigation papers which shows that two teenagers came together out of attraction and thereafter physical relationship was developed between them. Thus, this is not a case wherein out of lust victim was subjected for sexual assault. Considering the fact that now investigation is already completed and charge-sheet is filed, further incarceration of the present appellant is not required. The trial Court has not considered the same while rejecting the application. Therefore, the order passed by the Special Judge rejecting the application deserves to be quashed and set aside. Accordingly, I proceed to pass

following order :

ORDER

- (i) The appeal is allowed.
- (ii) The appellant – Nishant Balaji Thavkar shall be released on bail in connection with Crime No.218/2024, registered with Police Station Aroli, District Nagpur for the offence punishable under Sections 376(1), 376(3) of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
- (iii) The appellant shall not enter into the vicinity of Mouda, District Nagpur till culmination of the trial.
- (iv) The appellant shall not induce, threat or promise any witnesses, who are acquainted with the facts of the case either physically or through electronic media.
- (v) The appellant shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.
- (vi) The order passed by the Special Judge rejecting the bail application is hereby quashed and set aside.
- (vii) The fees of the appointed counsel be quantified as per rules.

(viii) The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

वाडोदे