

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

CRIMINAL APPEAL NO. 491 OF 2021

APPELLANT : Peer Mohammad Ghotu Mohd. Ismail
Aged about 23 years, Occu. - Driver,
R/o Yusufpur, Purkhas, Tq. Chail,
Dist. Kaushambi (Uttar Pradesh)

VERSUS

RESPONDENTS : 1] State of Maharashtra,
through Police Station Officer,
Police Station, Bibi, Tq. Lonar,
Dist. Buldhana.

2] Bhanudas Rangnath Kharat,
R/o Tadshivani, Tq. Sindkhed Raja,
Dist. Buldhana.

Mr. Mir Nagman Ali, Advocate for the appellant.
Mr. T. A. Mirza, A.P.P. for the non-applicant no.1/State

CORAM : V. M. DESHPANDE and
ANUJA PRABHUDESSAI, JJ.
DATE : JANUARY 31, 2022.

ORAL JUDGMENT [Per V. M. Deshpande, J.]

Heard. **ADMIT.** Taken up for final disposal by consent
of the learned counsel for the parties.

2. This appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “**the Atrocities Act**” for the sake of brevity) is filed by the appellant since the appellant is felt aggrieved by the order passed by the learned Additional Sessions Judge, Mehkar, Dist. Buldhana, dated 22.10.2021 in Bail Application No. 22/2021, whereby the learned Additional Sessions Judge has rejected the application for bail filed by the appellant under Section 439 of the Code of Criminal Procedure.

3. The applicant was arrested by Police Station, Bibi, Dist. Buldhana in connection with Crime No. 108/2021 for the offence punishable under Sections 363, 376(1)(i)(j), 506 of the Indian Penal Code, under Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “**the POCSO Act**” for the sake of brevity) and under Sections 3(1)(W)(i)(ii) and 3(2)(v) of the Atrocities Act.

4. Heard Mr. Mir Nagman Ali, learned counsel for the appellant and Mr. T. A. Mirza, learned Additional Public Prosecutor for respondent no.1/State.

5. As per the statement made by the learned Additional Public Prosecutor for the State, though, separate intimation was given to respondent no.2/complainant in respect of filing of the present appeal by the concerned Police Station Officer, nobody is appearing on behalf of respondent no.2. In our view, hearing of this appeal can proceed even in absence of the complainant since learned Additional Public Prosecutor is there to take care of the interest of the complainant/victim.

6. According to Mr. Ali, learned counsel for the appellant, further incarceration in jail of the appellant is not required in view of the fact that the Investigating Officer has already completed the investigation and filed the final report before the Court. He also submitted that looking to the age of the appellant, he be released on bail. He also submitted that there was love affair in between the appellant and the victim and the victim on her own had eloped with him and stayed for near about 45 days at the residential house of the appellant at Kaushambi in the State of Uttar Pradesh.

7. Though, the submissions made by the learned counsel

for the appellant appear to be attractive, however on a closer scrutiny of the contents of the charge-sheet, in our view, the submissions of the learned counsel deserve rejection.

8. The School Leaving Certificate, *prima facie*, indicates that the non-applicant no.2/victim was below 18 years of age. In that view of the matter, she is “child” within the meaning of clause (d) of Section 2(1) of the POCSO Act. In that behalf, it is the submission of the learned counsel for the appellant that there is no primary document contained in the charge-sheet to show the age of the victim. The said aspect can be considered during the course of the trial since, during trial, there will be an opportunity for the prosecution as well as the victim to prove her exact date of birth.

9. We have perused the statement of the victim. It clearly shows that at no point of time she was having any type of love or affection towards the appellant and it was the appellant, who tried to persuade her even against her wish. Not only that, her statement would show that the appellant had extended threat to her to kill her younger brother aged about 3½ years, which was precisely the reason for the victim to accompany with the appellant. The

statement of the victim coupled with medical opinion, *prima facie*, supports the charge of rape. In addition to the statement of the victim, there are statements of the other prosecution witnesses also, which clearly implicate the appellant.

10. Be that as it may. The consent obtained by giving threat and/or even simple consent by a minor has no value in the eye of law. Therefore, at this stage, the learned counsel for the appellant cannot press into service the aspect of consent. The appellant is a resident of the State of Uttar Pradesh. He has no roots in Maharashtra. In our view, this is not a case wherein this Court should exercise its jurisdiction to release the appellant on anticipatory bail.

11. Resultantly, the criminal appeal is dismissed. The impugned order passed by the learned Additional Sessions Judge, Mehkar, dated 22.10.2021 in Bail Application No.22/2021, stands confirmed.

(SMT. ANUJA PRABHUDESSAI, J.) (VM.DESHPANDE, J.)
Diwale