
(2022) 10 BOM CK 0137

In the Bombay High Court

Case No : Criminal Appeal No.549 Of 2022

Navnath Ramaji Chandikar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 376(1), 376(3), 506
Protection Of Children From Sexual Offences Act, 2012 — Section 4
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(v), 3(2)(va)

Citation : (2022) 10 BOM CK 0137

Hon'ble Judges : Vinay Joshi, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : A. A. Dhawas, A. R. Chutke, Deepali V. Sapkal

Final Decision : Disposed Of

Judgement

Vinay Joshi, J

1. Heard.

2. ADMIT. Heard finally by consent of the learned counsel appearing for the parties.

3. This is an appeal challenging the order dated 12.07.2022 passed on Exh.8 in Special POCSO Case No.26 of 2022 by which regular bail has been rejected. The appellant (accused) has challenged the impugned order on the ground that the trial Court has not considered the vital aspects of the case. It is argued that the story as narrated by victim is false and at the most it can be gathered that she ran away with the accused. However, there was no sexual contact in between them.

4. The State as well as the learned counsel appearing for respondent No.2 – victim resisted the bail. It is submitted that the victim was minor girl aged 13 years 11 months and therefore, even if it is assumed that she was consenting

party, her consent assumes no significance. It is submitted that the victim girl has specifically stated that on the point of knife she has been forcibly taken in the field where accused has committed penetrative sexual assault. It is also stated that the parents of victim as well as school teacher has corroborated her testimony.

5. At the instance report lodged by victim dated 24.12.2021, the crime was registered. The victim girl aged 13 years and 11 months was studying in 8th Std. at the relevant time. The appellant/accused is resident of the same village with whom victim had acquaintance. It is victim's case that on 22.12.2021 in the morning hours, the victim threatened her by showing knife and asked her to accompany, but she refused and went to the school. Thereafter, in the school she was seated alone in the ground where accused again arrived and by force dragged her to near by field and committed sexual assault. The victim stated that in the afternoon, she directly returned to her house without collecting her school bag. After two days, she disclosed the things to her parents on which report has been lodged.

6. There can be no dispute that minor's consent carries no meaning in the eyes of law. However, the learned counsel for the appellant would submit that genesis of the case is very much doubtful since though the victim was of tender age and alleged incident took place in the field, there are no marks of force or violence in that context. We have gone through the medical examination report, which indicates that there are no signs of injury on the person or genitals of the victim. It only says that hymen was completely ruptured. It is evident that no fresh injury or signs have been found in the medical examination which= prima facie run contrary to the case of informant.

7. The learned counsel for the appellant has pointed out that as per the prosecution case, the victim was dragged to longer distance and was forcibly caused to lay on rough surface which is quite improbable on the canvass of absence of any marks. Besides that he would submit that the victim was at her school and therefore, it is difficult to accept that from school she was forcibly taken by use of force. Prima facie the submission carries substance since there are no statements to indicate that the accused forcibly took victim from her school.

8. It emerges that for two days the victim had not disclosed the incident to her parents. In this regard, the learned counsel has submitted that when the parents of victim came to know that she was absent in the school, on deeper inquiry victim disclosed the things. The said submission carries substance and appears to be inconsistent with the story of the prosecution.

9. Though, medical evidence is not must to prove the offence of rape, however, having regard to the very tender age of victim total absence of medical evidence that too in case of forcible intercourse assumes significance. It is a matter of trial to establish that the accused had sexual intercourse with a victim. The

investigation is complete and charge-sheet has been filed. The accused is in jail from 24.12.2021 that is for near about last 10 months. By imposing stringent conditions chances of pressurizing the victim can be eliminated. Having regard to all above facts, we are inclined to grant bail and therefore the appeal is allowed.

10. The impugned order dated 12.07.2022 passed in Special POCSO Case No.26 of 2022 is hereby quashed and set aside.

11. The appellant (accused), namely, Navnath Ramaji Chandikar be released on bail in Crime No.0771 of 2021 registered with Police Station Bramhapuri, District Chandrapur for the offence punishable under Sections 376(1), 376(3) and 506 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3(2)(v) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act on furnishing P.R. bond in the sum of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties in the like amount.

12. The appellant shall not enter within the territorial jurisdiction out of the entire Bramhapuri Taluka till conclusion of trial.

13. The appellant shall not tamper the prosecution evidence in any manner.

14. The appeal stands disposed of in above terms.

15. Fees of appointed counsel be paid as per rules.