

**HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**

**Cr.A. No.6530/2021**

**Tousif Kha S/o Yusuf Kha V/s. State of M.P. & Others**

**Indore, Dated:- 26/02/2022**

Shri Syed Asif Ali Warsi, learned counsel for the appellant –  
Tousif Kha S/o Yusuf Kha.

Shri N.S.Bhati, learned Govt. Advocate for the  
respondent/State.

Ms. Archana Gosar, learned counsel for the objector.

1. They are heard. Perused the case diary /challan papers.
2. This is a **First** Criminal Appeal under Section 14-A (2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act by appellant - **Tousif Kha S/o Yusuf Kha**, who has been arrested by Police on **03.06.2021** in **Crime No.80/2021, Police Station Berchha, District Shajapur concerning offence under Sections 366, 376(2) (n), 506-B of IPC and Section 5 of M.P.F. of Religion Ordinance Act, 2020 and Section 3(1)(1), 3(2)(5) of SC/ST (Prevention of Atrocities) Act** against the order dated 04.09.2021 passed by the learned Special Judge, Shajapur, District Shajapur in Special ST / Bail Application No.128/2021, whereby the prayer for grant of regular bail has been declined.
3. As per prosecution, on 01.06.2021, a report was lodged by the father of the prosecutrix to the effect that his daughter, the prosecutrix, has been missing since 25.05.2021 and cannot be found

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despite best efforts. On making of the complaint report was registered and search for the prosecutrix was made and she was eventually recovered on 01.06.2021 when she was with the appellant who ran away. Thereafter statement of the prosecutrix was recorded in which she stated that the appellant had met her about 2 months ago and had stated his name to be Vikas. He kept meeting her from time to time and again met her on 23.05.2021 and told her that he would marry her. She believed in him and went along with him towards railway barricade Ranthbhawar where the appellant committed rape upon her. He asked to meet her after two days. The prosecutrix again met him on 25.05.2021 at about 12.00 p.m. and went along with him to Ujjain where they stayed near railway station.

4. The appellant revealed to her that his name is not Vikas but is Tausif Khan and that he is a Muslim. The prosecutrix told him that she would not marry him. The appellant then threatened her with dire consequences. He thereafter committed rape upon her at night. They then stayed at different places at Maxi, Makdon and Berchha for 5-6 days where the appellant committed rape upon the prosecutrix. He had taken her to Makdon where the Police saw them after which he ran away but was later arrested by the Police. The appellant is alleged to have hidden his identity from the prosecutrix and has committed

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rape upon her under the false pretext of marriage.

5. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in the case. The prosecutrix was 19 years of age at the time of the alleged incident and was thus major. She had voluntarily met the appellant and had gone along with him on several occasions. She was thus a consenting party throughout. Even as per her own statement recorded on 01.06.2021 she had stated that she remained with the appellant for 5-6 days even after coming to know about his real religion. The allegations as regards commission of rape are only general in nature. The entire conduct of the prosecutrix leaves no room for doubt that she had voluntarily developed physical relationship with the appellant and continued to do so even after acquiring knowledge of his real identity. No injury has been found on the person of the prosecutrix. It is hence submitted that the appellant deserves to be released on bail.

6. Learned counsel for the respondent/State as well as the objector have submitted that in view of the allegations leveled against the appellant and the material collected by the prosecution against him, he is not entitled to be released on bail particularly since in her statement recorded on 02.06.2021 the prosecutrix specifically stated that she had come to know of the real religion of the appellant only on

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the day of her recovery.

7. I have heard learned counsel for the parties and have perused the case diary. In her statement recorded under Section 161 of the Cr.P.C. on 01.06.2021 the prosecutrix had stated that the appellant had told her his real name and about his religion on 25.05.2021 itself. She continued to accompany him for a period of 4-6 days even thereafter. In her statement under Section 164 of Cr.P.C. recorded on the next day she stated that the appellant told her about his name and his religion only on 31.05.2021. There is hence contradictions in her statements. The prosecutrix is apparently major. As per her, she had developed physical relationship with the appellant willingly, but had refused to marry him on coming to know his religion.

8. In view of the facts of the case the probability of the prosecutrix being a consenting party cannot be ruled out. Investigation has been completed and challan has been filed and the appellant has remained in jail since 03.06.2021. The possibility of the trial taking a long time for its conclusion cannot be ruled out. In my opinion the appellant hence deserves to be enlarged on bail.

9. Accordingly, without commenting on the merits of the case, the appeal filed by the appellant is allowed and the impugned order dated

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04.09.2021 passed by the Special Judge, Shajapur, District Shajapur is hereby set aside. The appellant is directed to be released on bail upon furnishing a personal bond in the sum of **Rs.50,000/- (Rupees Fifty Thousand Only)** with **one solvent surety** of the like amount to the satisfaction of the trial Court for his regular appearance before the trial Court during trial with a condition that he shall remain present before the court concerned during trial and shall also abide by the conditions enumerated under Section 437 (3) Criminal Procedure Code, 1973.

10. It is also observed that if the appellant is found to be involved in any criminal activities, after his release on bail, then the present bail order shall stand cancelled without further reference to this Court; and the State / prosecution will be free to arrest the accused in the present case also.

11. This order shall be effective till the end of the trial, however, in case of bail jump, it shall become ineffective.

Certified copy as per rules.

**(PRANAY VERMA)**  
**JUDGE**