

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 975 OF 2016

Mr. Pramod Suryabhan Pawar ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

WITH

INTERVENTION APPLICATION NO. 466 OF 2016

IN

ANTICIPATORY BAIL APPLICATION NO. 975 OF 2016

Ms. Reshma Londhe ... Intervener/ Org.
Complainant.

In the matter of :

Mr. Pramod Suryabhan Pawar ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Kuldeep S. Patil, Advocate for the Applicant.

Mr. Arfan Sait, A.P.P. for the Respondent - State.

Mr. Nilesh Tribhuvann, Advocate for the Intervener/Org.
Complainant.

PSI- Mr. Sunil Gawali (Panvel City Police Station) is present.

CORAM : A. M. BADAR, J.

DATE : 01st JULY, 2016

P.C. :

1 The applicant/accused in Crime No. I-189 of 2016
for the offences punishable under sections 376, 417, 504, 506

(2) of the Indian Penal Code and under sections 3(1)(u),(w) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, by this application is praying for pre-arrest bail.

2 Heard the learned counsel appearing for the Applicant/accused. He argued that the perusal of the entire FIR will go to show that relations between the applicant and the informant/prosecutrix reflects the consensual sex. He further argued that the FIR would show that the incident in question, attracting provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herereinafter referred as “the SC & ST Act” for short) happened in the year 2015 and, therefore, the said Act, as it stood prior to its amendment w.e.f. 01.01.2016 will be applicable. Therefore, the learned counsel argued that no offence punishable under any of the provisions of the said Act, as stood prior to its amendment, are attracted and, therefore, bar of Section 18 is not attracted.

3 As against this, the learned APP argued that the present case is of sexual intercourse with a woman who was under the mis-conception of facts. Her consent cannot be said to be valid consent under section 91 of the Indian Penal Code. Learned APP by relying on the FIR, lodged by the prosecutrix, submitted that no case for anticipatory bail is made out.

4 I have also heard the learned counsel appearing for the informant/prosecutrix. He argued that messages sent on whatsapp by the present applicant are not only addressed to her but they are showing the entire family members of the informant in bad taste. Castiest allegations are attributed to the family of the informant/prosecutrix. The learned counsel for the informant/prosecutrix relied upon the judgments in the matter of : (i) Vilas Pawar vs. State of Mharashtra (2012) 8 SCC- 795 (ii) Bachu Das vs. State of Bihar (2014) 3 SCC 471, (iii) Shakuntala Devi vs. Baljinder Singh, (2014) 15 SCC 521, (iv) State of UP vs. Naushad (2013) 16 SCC 651 and (v) Kaini Rajan vs. State of Kerala (2013) 9 SCC 113, in support of his argument that provisions of section 438 of the Criminal Procedure Code have no application so far as the SC & ST Act, 1989 is concerned. According to the learned counsel for the informant, the applicant/accused has committed serious offence against body of a woman and he cannot take advantage of body of a woman to satisfy his lust by alluring a woman to give consent for sexual intercourse.

5 I have carefully gone through the entire text of the detailed FIR lodged by the informant/prosecutrix, who is serving in the State Government as Deputy Commissioner of the Sales Tax. The Applicant/accused is serving as Deputy Commandant at Central Reserve Police Force. I have also

perused the case diary, containing papers of the investigation. The FIR as well as papers of investigation reflects the prosecution case thus :

6 The informant/prosecutrix belongs to “Koli Mahadev” a Scheduled Tribe notified for the State of Maharashtra. The case diary contains a validity certificate, showing that the prosecutrix belongs to “Koli Mahadev” a Scheduled Tribe.

7 According to the prosecution case, the applicant as well as the informant become acquainted with each other in the year 2004 when the informant was serving as Junior Research Assistant with the Rahuri University, Pune and the applicant was preparing for a competitive examinations. Thereafter, in the year 2005 the present applicant is successful in getting employment in CRPF, Central Reserve Police Force.

8 According to the prosecution case thereafter also the informant as well as the present applicant were in contact with each other and on holidays they used to meet each other at Ahmednagar District. In the year 2007, the prosecutrix was appointed as Nayab Tahasildar and was posted at Chalisgaon. It is the case of the prosecution that in the year 2008, the present applicant had proposed the informant/prosecutrix. At that time, the informant told him that she belongs to Koli

Mahadev Tribe, which fact the applicant was knowing since beginning. According to the informant, at that time the applicant assured her that her caste would not come in the way of their marriage. He assured her that they will marry after marriage of an elder sister of the applicant. According to the informant on 24.01.2009, she as well as the applicant visited temple of Patnadevi at Chalisgaon and at that time also the applicant assured to marry the informant. Then there was a celebration with friends.

9 According to the prosecution case in November, 2009, the applicant committed sexual intercourse with her on promise of marriage. Thereafter also such relations continued as and when the applicant used to visit the informant on holidays. The FIR further reveals when the applicant was posted at Gadchiroli, he was not getting leave. At that time, the informant used to visit his official residential quarters from time to time and they were indulging in sexual relations at that place also.

10 According to the informant, after marriage of elder sister of the applicant, even on 23.12.2012 the applicant had sexual intercourse with her. Thereafter, he was evasive about their marriage on the pretext of his younger sister's marriage. The FIR reveals that physical intimacy of the applicant and the prosecutrix thereafter also continued in the year 2013,

2014 and 2015. The informant alleged that from August 2015 the present applicant started quarreling with her without any reason and he sent messages on her cell phone on 27.08.2015, 28.08.2015 and 22.10.2015 hurling castiests abuses in order to humiliate her. Precisely said messages were as under :

“Samajala Lagleli keed” “Chappal Dokyvar
Thevli Tar doka Ghan Hota” “Reservation ne
Akkal yet Nahi” “Fukat milaleli Nokri”.

Though all this happenings in the life of the informant/prosecutrix, in her FIR she averred that thereafter also physical intimacy between them continued. She alleged that from 9th March, 2016, the applicant was either not receiving her calls and was giving abuses on telephone calls. Those abuses were castiests as per the version of the informant.

11 The informant further averred that she came to know that on 20.03.2016 there was an engagement ceremony of the applicant with another woman and that on 6th May, 2016 she came to know that the applicant married another woman. As such the prosecutrix lodged the FIR on 17th May, 2016, resulting in registration of the crime in question.

12 As section 376 of the Indian Penal Code is invoked by the investigating officer, let us examine the matter from

that angle. The applicant as well as the prosecutrix are highly educated persons, occupying high posts in public employment. As per the version of the prosecutrix, on promise of marriage, the applicant/accused had sexual intercourse with her. It is well settled that even for making out offence under section 417 of the Indian Penal Code, deceptive intention is required since inception. If the parties are agreed for a particular course of action and if subsequently one of them is not in position to continue with a course of chosen action, then offence punishable under section 417 of the Indian Penal Code is not made out. There is nothing on record which will prima facie, indicates that long back in the year 2008 when the applicant proposed the prosecutrix that too with previous history of intimacy between them; he had an intention ultimately to cheat the informant/prosecutrix by not marrying her.

13 It is seen from the FIR, that the applicant as well as the informant/prosecutrix involved in physical intimacy right from the year 2009 and despite rough weather their relationship continued even upto 9th March, 2016. It was argued that the consent so extracted from the informant was under mis-conception of facts. At a pre-trial stage it needs to be kept in mind that the prosecutrix is a highly educated lady, occupying the responsible post in the State Government. She was definitely knowing what was good for her and what

was bad for her right from the beginning of her relationship with the applicant. Still she has chosen to submit herself to the applicant. Prima facie, it appears that the couple was in love since beginning and their acquaintance dates back to the year 2004. With this history, it cannot be said that the consent of the prosecutrix was under the mis-conception of facts.

14 Now let us take the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The learned APP has tendered a report submitted by the investigating officer, which is taken on record. From that report it is seen that the provisions of the amended Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and more particularly section 3(1)(u)(w), 3(2)(va) are invoked against the present applicant. It would be apposite to reproduce the provisions of this section and they read thus :

3(1)(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

3(1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribes, knowing

that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent ;

(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribes, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

3(2) (va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine.”

Sections so invoked against the present applicant came to the statute book on being inserted by the Act No.1 of 2016, which is made enforceable from the year 2016.

15 The averment in the FIR is to the effect that the present applicant had sent messages, containing castiests abuses which are reproduced in the earlier portion of this order. Those texts are of 27.08.2015, 28.08.2015 and

22.10.2015. At that time, these amended provisions of the SC & ST (Prevention of Atrocities) Act were not on the statute book. As such one will have to revert back to the provisions of the old Act. Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, which was holding field before the year 2015, reads thus :

“3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

.....

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

Requirement of section 3(1)(x) of the old Act is intentional insult and intimidation with intent to humiliate the person belonging to Scheduled Caste or Scheduled Tribe in any place within public view. Messages sent on whatsapp cannot be said to be an act of intentional insult or intimidation or an intent to humiliate in public place within public view. As such it is prima facie seen that no offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is attracted in the case in hand. As such bar of section 18 is also not applicable to the instant case.

16 No prima facie case under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out. The rulings cited by the learned counsel for the informant has as such no application to the case in hand.

17 In this view of the matter, for the above stated reasons I proceed to pass following order :

ORDER

- i. The order dated 13.06.2016, granting ad-interim anticipatory bail to the applicant/accused is hereby confirmed and on the same terms and conditions.
- ii. In addition, the applicant/accused should attend the concerned police station on 10th and 17th July, 2016 and he should co-operate the investigating officer in investigation of the crime in question.
- iii. The applicant should not contact the informant/prosecutrix in any manner.
- iv. In addition, the Applicant/accused is directed that he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him

so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicant shall not tamper with the prosecution evidence in any manner.

- v. The anticipatory bail application is disposed of accordingly.
- vi. The intervention application no.466 of 2016 is also disposed of in view of the disposal of the main application.

(A. M. BADAR, J.)

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