

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1093 OF 2019

Ramnarayan s/o. Dashrath Bahekar .. Appellant
Age. 26 years, Occ. Service,
R/o. Ambhora, Post. Vaidya Wadgaon,
Tq. Mantha, Dist. Jalna.

Versus

1. The State of Maharashtra .. Respondents
Through Satara Police Station
Satara, Aurangabad.
2. Nilam d/o. Bhausahab Aher
Age. 24 years, Occ. Post Nursing Course,
through Satara Police Station,
Satara, Aurangabad.

Mr. Shrikant T. Veer, Advocate for the appellant.
Mr. K.S. Patil, APP for respondent/State.
Mr. P.G. Patil, Advocate (appointed) for respondent No.2.

**CORAM : T.V. NALAWADE &
S.M.GAVHANE,JJ.
DATED : 19-11-2019**

ORAL JUDGMENT [PER : S.M. GAVHANE,J.] :-

1. The appeal is admitted. Notice after admission made returnable forthwith. By consent, heard both the sides for final disposal.
2. This appeal is directed against order dated 14.10.2019 in

Criminal Bail Application No. 1905 of 2019 rejecting the said application by the District Judge-4 and Additional Sessions Judge, Aurangabad, filed under section 439 of the Code of Criminal Procedure by the appellant against whom Crime No.326 of 2019 has been registered with Satara Police Station for the offences punishable under section 376(2)(n) of the Indian Penal Code and section 3(1)(r)(s)(w), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Mr. Veer, learned Counsel for the appellant submitted that the FIR does not disclose any offence against the appellant. It cannot be said that the appellant has done any act in bad faith or with intention to deceive the informant. It is submitted that the Trial Court has not considered the aspect that the alleged incident has taken place in the month of March, April and May of 2019 and the FIR is filed on 13.09.2019 and as such there is unreasonable delay and it has been filed after thought. It is submitted that the informant - prosecutrix is aged 24 years. The alleged incident has not taken place within the public view to attract offence under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The FIR itself shows that the informant had gone to the room of the appellant on three occasions and therefore there is no question of doing any act by the appellant against

her wish or will or under any false promise. It is submitted that the investigation is almost over and custody of the appellant is not required and therefore the Trial Court ought to have granted bail to the appellant. It is submitted that, therefore, the appeal be allowed and by setting aside the impugned order, the appellant be released on bail as prayed in the bail application before the Trial Court.

4. Mr. K.S. Patil, learned APP and Mr. P.G. Patil, learned Counsel appearing for respondent No.2-informant have submitted that the allegations made in the FIR are sufficient to attract the offences alleged against the appellant. The appellant has committed sexual assault on the informant under the false promise of marriage. Thus, they have prayed to dismiss the appeal. Learned APP submitted that the investigation is almost completed and the charge-sheet is to be filed.

5. We have carefully considered the submissions made by learned counsel for the appellant, learned APP and learned Counsel for respondent No.2. Perused the investigation papers and copies of documents produced on record.

6. It appears from the perusal of the FIR that on the complaint of

respondent No.2 - informant, the aforesaid crime has been registered. The informant is aged 24 years and thus she is a major. The appellant is serving in Kamalnayan Bajaj Hospital, Aurangabad. The informant after completing general nursing course from Yashwant Nursing School, Ashti, Dist. Beed in 2018, has served for some days as a teacher in Gandhi Nursing School at Ashti and thereafter she took admission for B.Sc. nursing course at Kamalnayan Bajaj Nursing School, Aurangabad on 15.10.2018. It is alleged in the FIR that being a senior staff member, the appellant with other team members visited Kamalnayan Bajaj Nursing School, Aurangabad and at that time he met the informant. At that time the appellant had given mobile number to the informant. It is alleged in the FIR that on holidays the appellant and the informant used to meet outside and on 02.11.2018, appellant proposed the informant, but she stated that she belongs to Mahar caste and therefore they cannot perform marriage. It is further alleged that their friendship was converted into love affair and on three occasions the appellant had sexual relations with her against her wish i.e. on 03.03.2019, 13.04.2019 and 18.05.2019 in the house where the appellant was residing, promising her that he would marry her.

7. The FIR was lodged on 13.09.2019. Considering the above

referred allegations in the FIR, it appears that the appellant had sexual intercourse with the informant giving her promise of marriage. The informant is aged 24 years. Therefore, possibility that she is consenting party to the sexual relations cannot be ruled out. It appears from the police papers that almost entire investigation is completed and only charge-sheet is remained to be filed. In all the above circumstances, it was fit case to grant bail by the Additional Sessions Judge. Therefore, considering the nature of the offence and the circumstances in which the appellant had sexual intercourse with the informant, when appellant's custody is not necessary, it is just to release him on bail on certain conditions, considering the submissions made by the learned Counsel for respondent No.2 - informant and learned APP, by setting aside the order under challenge, by allowing the application for bail filed by the appellant and by allowing the present appeal. Therefore, following order is passed :-

ORDER

- I. The appeal is allowed.
- II. The order made by the learned Additional Sessions Judge, Aurangabad is hereby set aside. Criminal Bail Application No. 1905 of 2019, which was filed in the Sessions Court is hereby allowed.

III. The Appellant is to be released on bail on his furnishing P.R. & S.B. of Rs.30,000/- (Rupees Thirty Thousand Only) with one or more solvent sureties. He is not to tamper with prosecution witnesses. He is not to commit similar offence. He is to keep himself away from informant and he is not to keep contact with the informant.

IV. The fees of the appointed counsel is quantified as Rs.3,000 (Rupees Three Thousand) and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

[S.M.GAVHANE,J.]

[T.V. NALAWADE,J.]