

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

CRIMINAL APPEAL NO. 927 OF 2019

Mr. Absar @ Afsar Mehboob Shaikh	...	Appellant
v/s.		
The State of Maharashtra & anr.	...	Respondents

Mr. Pravin Dabade i/b. Vikas B. Shivarkar for the appellant.
Mr. A.S. Patil, APP for the State.

CORAM : DAMA SESHADRI NAIDU, J.

24th July 2019.

P.C.

The applicant is an accused in Crime No.428 of 2019 for the alleged offences under Section 376(2)(n) and 506 of Indian Penal Code, on the file of Bharti Vidyapeeth Police Station, Pune. Initially, before the Additional Sessions Judge, Pune, the applicant filed Criminal Bail Application No.2933 of 2019 under Section 438 of the Cr.P.C. Through a detailed order dt.18th June 2019, the trial Court dismissed the bail application. Aggrieved, the applicant has filed this criminal appeal under Section 14-A(2) of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (“the Atrocities Act”).

2. Shri Pravin Dabade, the learned counsel for the appellant, has submitted that the victim is in her 20s and she had a consensual relationship with the applicant. Later because of that consensual relationship, the victim gave the birth to a child, who was given in adoption to the applicant's uncle. According to Shri Dabade, then the victim agreed in writing that she was withdrawing all allegations against the applicant. Later, for extraneous reasons, she has complained and had a crime registered.

3. In the end, Shri Dabade has stressed that the victim is no minor and that she has had a conscious, consensual relationship with the applicant. So, despite the presence of Section 3 of the SC & ST Act, the applicant is entitled to anticipatory bail.

4. Shri Ajay Patil, the learned Additional Public Prosecutor, has strenuously opposed the application. According to him, the applicant has criminal antecedents. He is an accused in a crime under section 302 of IPC, in another State. In fact, he has presently been on bail.

5. Shri Patil has also submitted that the alleged letter the victim has signed has no legal sanctity. It has been an emotional threat to her because her child had been kept away from her. And with a promise that the child would be given back to her, the applicant must have forced her to sign on dotted lines.

6. First, Shri Patil has brought to my notice Section 18 of the SC & ST Act. Then, he has maintained that even otherwise the crime is

heinous and, of all the remedies, anticipatory bail is the last on the applicant could insist on.

7. Heard Shri Dabade, the learned counsel for the appellant, and Shri A. S. Patil, the learned Additional Public Prosecutor.

8. Indeed, the case—even to the extent it was recorded in the Trial Court's order dated 18th June 2019—presents a pathetic picture. The victim, 22-year old, was induced into a sexual relationship in 2013. It was on the promise that the applicant would marry her. He continued that relationship with that perpetual promise, but that promise remained a promise, to this day. Biology has nothing to do with law; it does not know what is legitimate and what is illegitimate. As a result, she became pregnant. Even then, the applicant kept on promising and assuring her about his commitment to marrying her. So she kept her pregnancy. A child was born, with a tag of illegitimacy. But the truth is on the converse. There can be illegitimate parents for they have an option to be so; there cannot be, however, illegitimate child, for it has no such option. A child is a child, with all its innocence intact.

8. Once the child was born, it has become another source of emotional blackmail for the applicant. And a source of torment for the victim. First, the child, it seems, was forcefully given in adoption to the applicant's relatives. When the victim wanted the child's custody, the applicant imposed many conditions. One of those conditions, I reckon, was her executing a document absolving the applicant of all crime.

9. As the relationship continued, many a time the victim insisted on solemnizing their relationship. But she had to wait for some time because the applicant was in judicial remand in another crime under Section 302 of IPC, in Karnataka. Despite those criminal antecedents, the victim wanted, and was prepared, to marry the applicant. She had no choice for the stigma of an unwed mother stared at her.

10. Besides that, parliament has advisably barred anticipatory bail to the accused of any offence under the Atrocities Act. And that legislative intent manifests itself in Section 18 of the Act. To that extent, I find no error in the Trial Court's judgment. Here the victim belongs to a community protected under the Atrocities Act.

11. True, judicially section 18 has been interpreted as having not imposed any absolute embargo on the High Court's power to provide to the accused an anticipatory bail. But that must be under exceptional circumstances. Here I find no such circumstances. On the contrary, the applicant's conduct does not seem to deserve any such indulgence.

So I dismiss the criminal application.

(DAMA SESHADRI NAIDU, J)