

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

CRIMINAL APPEAL NO.980 OF 2019

Sachin Shivaji Natulkar

.. Appellant

vs

1. Chitya Tejrao Sehgaavkar

2. State of Maharashtra

(thr.Sanpada police station)

.. Respondents

Mr.Kedar Patil for Appellant

Ms.Jyoti S.Lohakare APP for State

Ms.Devyani Kulkarni for Respondent no.1

Mr.J.A.Naik API Sanpada police station

Navi Mumbai present

CORAM : P.N.DESHMUKH, J

DATE : 19 SEPTEMBER, 2019

P.C

1. Heard learned counsel for the appellant/accused, learned APP for State and learned counsel for complainant.

2. This appeal is filed against rejection of bail to accused in Crime No.I-74 of 2019 registered by respondent no.1 for offences under section 376 IPC and under section 3 (1) (xii) 3 (2) (v) of the Protection of Scheduled Caste and Scheduled Tribes (Atrocities) Act 1989.

3. It is case of the appellant, that the prosecutrix who admittedly, is major aged 26 years had by her consent, kept physical relations with him. However, after it revealed to the appellant that she belonged to some other caste, and as their marriage was not to be accepted by the appellant's family members, inspite of his promising to marry her, could not kept his promise till 6.6.2019 on which day, appellant took the prosecutrix to one temple, and after performing marriage, they resided together in his home for sometime.

4. Learned counsel for the appellant therefore, submitted that from the contents of itself report, no case attracting the provisions of rape, can said to be attracted and possibility of false implication is made out and contended that since charge sheet is filed, the appeal be allowed by imposing conditions.

5. Learned APP submitted that there is prima facie evidence against the appellant whose involvement is established from the statement of prosecutrix and of her friends stating that there was a love-affair between the appellant and the prosecutrix, and thus contended that the appeal be rejected.

6. Learned counsel for the complainant submitted that there is threat perception to the prosecutrix, and the appellant knowing that the prosecutrix belonged to some other caste, maintained physical relations with her and on giving false promise to marry, continued to have such relations and as such, submitted that the appeal be rejected.

7. In the background of submissions advanced as aforesaid, a bare perusal of the report would reveal that the prosecutrix was residing in New Mumbai, since September 2017 and during this period, as she wanted to join coaching classes for competitive exams came in contact with the appellant and they developed friendship. One day, thereafter in the night appellant invited her for having ice-cream. Initially, the prosecutrix refused to join him for the same. However, subsequently they came together and since December 2017, started roaming together. It is also alleged that when the appellant proposed for marriage, the prosecutrix disclosed that she belonged to some other caste. In spite of the same, they continued to meet and in February 2018 for the first time, indulged in physical relations in some hotel and thereafter, for a period of one year, continued such relations when on 12.1.2019 appellant is alleged to have refused to marry her, contending that his family members did not

accept such marriage. The report further reveals, that inspite of such refusal to marry prosecutrix insisted appellant to marry her. Appellant then on 6.6.2019 ultimately performed marriage with her in some temple against the wish of his family members and thereafter they resided in his house for sometime and thereafter prosecutrix left to her parental home and lodged the report.

8. When the contents of the report as aforesaid are considered, it is material to note that there is no forceful intercourse by the appellant at any point of time. In fact, it is found that on or after knowing that she belonged to different caste, for a period of one year, the appellant and the prosecutrix continued physical relations at various places. It is also material to note that, after the appellant refused to marry her, it is the prosecutrix who was insisting him for the same and accordingly, the appellant got married with her in some temple. However, thereafter since the marriage was not accepted by his family members, prosecutrix left the place.

9. Having considered facts as aforesaid, case of prosecution, & prosecutrix having been found subjected to sexual intercourse as opined

by the Medical Officer by itself, is no ground for rejection of bail, all the more when the prosecutrix is major, in the circumstances appeal is liable to be allowed.

10. Hence, following order :

ORDER

(i) The Appellant shall be released on bail on his executing P.R.bond in the sum of Rs.20,000/- with one surety in the like amount;

(ii) While on bail, the Appellant shall attend Sanpada Police Station initially, on the first day of each such month for a period of six months and thereafter quaterly on first day of each month till the filing of charge sheet.

(iii) Appellant shall not tamper with the interested or any witnesses.

(P.N.DESHMUKH, J)