

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1111 OF 2018

Pravinkumar Mallappa Pujari.] ... Appellant

Versus

1. The State of Maharashtra.]
2. Anupama Ashok Kamble.] ... Respondents

Mr. Viresh V. Purwant for Appellant.

Mr. V. B. Konde-Deshmukh, APP for State - Respondent No.1.

Ms. Manisha Divekar a/w Mr. Shankar Katkar for Respondent No.2.

CORAM :- INDRAJIT MAHANTY &
SARANG V. KOTWAL, JJ.

RESERVED ON :- MARCH 07, 2019

PRONOUNCED ON :- MARCH 11, 2019

P. C. :-

1. This is an Appeal preferred by the Appellant under Section 14 of The Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as the 'Atrocities Act') against the Order dated 09/08/2018 passed by the learned Additional Sessions Judge, Solapur, in Criminal Bail Application No.989 of 2018 whereby the application filed by the Appellant for anticipatory bail

was rejected. The Appellant is seeking his release on bail in the event of his arrest in connection with C.R.No.320 of 2018 registered with Faujdar Chavadi Police Station, Solapur for the offence punishable under Section 376 of the IPC. The provisions of the Atrocities Act are also applied against the Appellant.

2. The FIR was lodged by the first informant on 26/05/2018 under Section 376 of the IPC vide C.R.No.320 of 2018 at Faujdar Chavadi Police Station, Solapur.

3. Brief allegations in the FIR are as follows :

When the first informant was studying in an engineering college at Kegaon, Solapur in the year 2008, the Appellant got himself acquainted with her. On 26/12/2010, both of them went to Tuljapur and paid visit to the temple there. The Appellant gifted her a silver anklet. After 3 to 4 months, the Appellant suggested that they should have love affair. After a few months, he took her to a farmhouse at Amchi, Karnataka. According to the first informant, she was forced to go with him. There, he tried to develop physical intimacy but she resisted. It is further alleged in the FIR that on the next occasion, he

told her that he had her photographs and threatened to upload those on the internet. Thereafter, he took her to the same farmhouse and this time they had sexual intercourse. The first informant has mentioned in the FIR that at that time, the sexual intercourse took place without her consent. The FIR further mentions that, on the next occasion, the first informant was taken to Kudal Sangam at Karnataka and again they had sexual intercourse. Thereafter, the first informant started serving in Pune from 30/06/2015. The Appellant also started residing in Pune. It is her case that the first informant herself used to give him money whenever he needed it. The Appellant used to call her to his room. It is her case that he used to threaten to commit suicide and therefore, she used to go to his room. It is her case in the FIR that the Appellant used to threaten her of uploading her photographs on the internet. Between August-September, 2015, again they had sexual intercourse and again the first informant has stated that it was done without her consent. The FIR further mentions that, thereafter they used to have sexual intercourse frequently and she even got pregnant. On 07/10/2016, she underwent a procedure for abortion. According to her, this too was done against her wish. Thereafter, the first informant insisted that they get married. The

Appellant took her to his house in district Vijapur at Karnataka. The FIR mentions that the Appellant's mother told her that she belonged to a lower caste and not worthy of her son. The Appellant's mother drove the Appellant and the first informant out of the house at 2.00 a.m. in the night. The FIR further mentions that the Appellant was to get Rs.26 Lakhs from his family for going to New Zealand. Since he was inclined to marry the first informant, the Appellant's family refused to pay him and therefore, he started residing in Pune. Thereafter, the Appellant got engaged with the first informant on 19/02/2017 at Indapur. The Appellant was serving in a multinational company and he went to Mysore for his training. It is stated by the first informant that at that time, there was a quarrel between them and therefore, the Appellant broke their relationship. Thereafter when she tried to contact him, he told her that since she belonged to a lower caste, he could not marry her. According to the first informant, she was shocked and had to take treatment from a psychiatrist. Thereafter, the Appellant came back from Mysore and came to her house. He further informed her that by February 2018, he would convince his mother and they could get married in March. However, since then he did not get in touch with the first informant. On

14/03/2018, she herself called the Appellant and asked about marriage. At that time, the Appellant informed her that he could not marry her as his mother was opposed to the same. He further told her not to contact him again. In the first week of April, the first informant went to the flat of the Appellant and accused him of having love relationship with one other girl. The first informant had verbal exchanges with that girl. After that, the first informant and her father went to the flat of the Appellant when they found that the other girl was with the Appellant. It is further alleged that the Appellant and that other girl assaulted the first informant about which the first informant had lodged a police complaint at Hinjewadi Police Station, Pune. Based on these allegations, the FIR vide C.R.No.320 of 2018 was registered at Faujdar Chavadi Police Station, Solapur.

4. The Appellant preferred Anticipatory Bail Application No.989 of 2018. The order mentions that Sections 3(b)(t)(s)(6) of the S.C.S.T. Act were applied. It appears that, perhaps Section 3(2)(v) of that Act could have been mentioned in the context of the case. The learned Judge, while rejecting the application, observed that the allegation against the Appellant was that he had forcible sexual

intercourse with the first informant from time to time by giving threats to her and that, detailed investigation was required. It was also observed that custody was required to find out which tablet was given to the first informant and that photographs were to be recovered from his mobile phone.

5. We have heard Mr. Viresh V. Purwant learned Counsel for the Appellant, Mr. V. B. Konde-Deshmukh, learned APP for State - Respondent No.1 and Ms. Manisha Divekar, learned Counsel for Respondent No.2.

6. Ms. Manisha Divekar, learned Counsel for the first informant as well as Mr. V. B. Konde-Deshmukh, learned APP for State, submitted that the offences under the Atrocities Act are made out and therefore, the relief of anticipatory bail could not be granted to the Appellant. They submitted that the physical intercourse had taken place against her wish and there was no consent. There was threat of publishing her photographs. On one occasion, the Appellant had even mentioned that since the first informant belonged to a lower caste, he was unable to marry her. Thus, according to the learned

Counsel for the first informant and the learned APP, and offence was made out and therefore, the relief of anticipatory bail should not be granted to the Appellant.

7. On the other hand, Mr. V. V. Purwant, learned Counsel for the Appellant, submitted that the allegations in the FIR do not make out any offence whatsoever, including that under Section 376 of the IPC. Consequently, even the offences under the Atrocities Act are also not made out. Both of them were having love affair and the subsequent dispute which arose between them had led to filing of the present FIR. The Appellant was innocent and thus was falsely implicated. His future will be ruined if he is not granted the relief of anticipatory bail.

8. It clearly appears that the Appellant and the first informant were having love affair since about 2008 i.e. for more than 10 years. The first informant herself had accompanied the Appellant when they first visited Karnataka, and thereafter when they had their first sexual intercourse. The FIR mentions that even thereafter, they regularly had sexual intercourse and on one occasion, she had even

got pregnant. She underwent procedure for abortion thereafter. From the allegations in the FIR, it is clear that the Appellant made serious efforts to convince his family members as he wanted to get married with the first informant. The FIR mentions that on one occasion when both of them had gone to the Appellant's house, both of them were kept out of his house in the night. The Appellant had even sacrificed his prospects of going to New Zealand for the sake of the first informant. The Appellant even got engaged with the first informant on 19/02/2017. All this background shows that the Appellant and the first informant had love affair and the issue of different castes never cropped up during that time. From the nature of the allegations in the FIR, it appears that dispute arose between the Appellant and the first informant because of the entry of another girl who was found in the flat of the Appellant. Reading the FIR as a whole, we are of the considered view that the Appellant and the first informant had consensual sexual intercourse and they were having such relationship over a long period of about 10 years. Therefore, *prima facie*, the ingredients of the offence punishable under Section 376 of the IPC are not made out. Consequently, even the ingredients of the alleged offences under the Atrocities Act are not made out.

Therefore, the bar to grant anticipatory bail under the Atrocities Act does not operate in this case. Therefore, we are inclined to grant the relief of anticipatory bail to the present Appellant. It needs to be noted that the findings recorded hereinabove are limited to the consideration of this bail application only and the trial Court shall not be influenced by the same while deciding the case of the Appellant on merits and in accordance with law.

9. Hence, the order.

ORDER

- (i) The Appeal is allowed.
- (ii) The order dated 09/08/2018 passed by the learned Additional Sessions Judge, Solapur, in Anticipatory Bail Application No.989 of 2018, is set aside.
- (iii) In the event of his arrest in connection with C.R.No.320 of 2018 registered with Faujdar Chavadi Police Station, Solapur, the Appellant is directed to be released on bail on his furnishing a P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with one or two sureties in the like amount.

- (iv) The Appellant shall report to the Investigating Officer every alternate Saturday between 10.00 a.m., to 12.00 p.m. till filing of the charge-sheet and he shall cooperate with the investigation.

(SARANG V. KOTWAL, J.)

(INDRAJIT MAHANTY, J.)