

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 321 OF 2021

Shaikh Sadeque s/o Shaikh Chand,
Age : 31 years, Occ: Labour,
R/o: Hadgaon (Bk), Tq: Pathri,
Dist. Parbhani.

..Appellant

Versus

The State of Maharashtra,
through Pathri Police Station,
Taluka Pathri, Dist. Parbhani and anr.

..Respondents

Mr G.R. Syed, Advocate for appellant
Mrs P.V. Diggikar, A.P.P. for respondent no.1
Mr Amar Lavte, Advocate (appointed) for respondent no.2

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 4th AUGUST, 2021

PER COURT :

1. The appellant is seeking regular bail in connection with Crime No.242 of 2021 dated 4.6.2021, registered with Pathri Police Station, Taluka Pathri, District Parbhani, for the offences punishable under Sections 376 (2) (n), 323, 506 of Indian Penal Code and Section 3 (1)(r), 3 (1)(s), 3 (2)(v), 3 (2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His application with similar prayer came to be rejected by the Additional Sessions Judge, Parbhani on 22.6.2021 by order passed below bail application in connection with the crime. The appellant/original accused has preferred this appeal in terms of the provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The learned Counsel for the appellant submits that the appellant is in jail in connection with the present crime since 4.6.2021. Respondent no.2/complainant is 45 years of age and she has made reckless allegations against the appellant. The learned Counsel submits that respondent no. 2. has alleged in the complaint that under the false promise of marriage, the appellant has developed illicit sexual relations with her and she was subjected to rape for near about three years at various places. Even, the appellant has taken jewelry worth Rs.30,000/- from respondent no.2/informant and also cash of Rs.30,000/- from her under the said false promise of marriage. The learned Counsel submits that respondent no.2 has referred one incident dated 2.6.2021. However, there is no explanation as to why the complaint was not filed in respect of the said false promise of marriage and establishing sexual relations with the respondent no.2 under that pretext. Furthermore, in respect of the alleged incident dated 2.6.2021, the complaint also filed belatedly. The learned Counsel submits that the trial Court has referred one agreement of appellant/accused and respondent no.2/informant. It has stated in the said agreement that the appellant and respondent no.2 got married. However, they have decided to reside separately and now they are residing separately. They have no concern with each other in future. Though the said agreement was executed on 23.4.2021, however, respondent no.2 has filed present complaint on 4.6.2021. There are no antecedents and the appellant is ready to abide by the conditions. The appellant may be released on bail.

3. The learned Counsel for respondent no.2/original complainant submits that the allegations are severe in nature. The appellant has given false promise of marriage to the helpless lady/respondent no.2. Her husband left the house some ten years back and his whereabouts are not known. Respondent no.2 was residing at that village with her children. The appellant has taken undue advantage of the same and by giving false promise of marriage, established sexual relations with respondent no.2/original complainant. The appellant has committed rape on her at various places under the said false promise of marriage.

4. The learned A.P.P. submits that the investigation is still in progress. The appellant took informant at various places such as Nashik, Pune, Kalyan and Ahmednagar. The Investigating Officer would take some time to visit those places and record the statements of the concerned persons. There is possibility of tampering of the evidence, if the appellant is released on bail.

5. We have gone through the police papers particularly, the complaint. *Prima facie*, it appears that there are consensual relations between the appellant and respondent no.2, who is 45 years of age, having two children. It is difficult to believe that respondent no.2, being 45 years of age, was not in a position to understand the consequences of her consensual relations with the appellant. Furthermore, in the police papers, there is agreement between the appellant and respondent no.2 stating therein that though they got married as they fall in love with each other,

however, they got separated and they have no concern with each other. This agreement was executed on 23.4.2021. It further appears that in the month of June 2021, respondent no.2 has filed the complaint. There are no antecedents. Thus, by imposing certain conditions, we are inclined to release the appellant, who is in jail since 4.6.2021, on bail. Hence, we proceed to pass the following order:

- ORDER -

- (i) Criminal Appeal is hereby allowed.
- (ii) The appellant/original accused Shaikh Sadeque s/o Shaikh Chand in connection with Crime No.242 of 2021 dated 4.6.2021, registered with Pathri Police Station, Taluka Pathri, District Parbhani, for the offences punishable under Sections 376 (2) (n), 323, 506 of Indian Penal Code and Section 3 (1) (r), 3 (1) (s), 3 (2) (v), 3 (2) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on furnishing P.R. bond of Rs.20,000/- with one solvent surety on the following conditions :
 - (a) Appellant shall attend the concerned police station on every Sunday between 8.00 a.m. to 11.00 a.m. till filing of the charge-sheet.
 - (b) In addition to that, the appellant shall make himself available as and when called by the Investigating Officer in carrying out further investigation in connection with the present crime.
 - (c) The appellant shall not make any attempt to contact or communicate to respondent no.2/original complainant in any manner till filing of the charge-sheet.

7. We quantify the legal fees of the Counsel appointed for respondent no.2/original complainant at Rs.2,000/- (Rs. Two thousand only) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

8. Criminal Appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[V.K. JADHAV, J.]

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