

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

9 CRIMINAL APPEAL NO.335 OF 2021

BUNTY @ BHARAT MOHAN ACCHADA
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr.Shaikh Mazhar A. Jahagirdar, Advocate for the appellant.
Mr.S.J. Salunke, A.P.P. for Respondent/State.
Mr.A.D. Sonar, Advocate for respondent no.2 (appointed)

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**CORAM : V.K. JADHAV AND
S.G. DIGE, JJ.**

DATE : 26th JULY, 2021

PER COURT:-

. The appellant – accused is seeking pre-arrest bail in connection with Crime no.0368 of 2021 registered with Shrirampur City Police Station, Shrirampur, Dist. Ahmednagar for the offence punishable under sections 376, 376(2)(n) and 420 of the Indian Penal Code, 1860 (for short, IPC) and section 3(1)(w), 3(2)(5) and 3(2)(5-A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. His application with similar prayer came to be rejected by the Special Court by order below Exhibit-1 in Criminal Bail Application No.123/2021 dated 28.06.2021.

2. Brief facts of the case are as follows :-

The informant, who is 45 years of age, has lodged a complaint in the concerned Police Station against the appellant – original accused alleging therein that her husband died 16 years back and thereafter, the appellant – accused had performed marriage with her secretly in one temple under the pretext of giving flat to her. It has also alleged that the appellant-accused had developed illicit sexual relations with her. It has also alleged that in the year 2016, the appellant – accused had taken amount of Rs.2,80,000/- from her under the pretext of purchasing of the flat, however, instead of giving her flat, shown her one open space. However, the informant came to know from some other person that the said open space belongs to some different owner. The Informant belongs to scheduled caste category. The appellant- accused, though knowing her caste, had committed rape on her under the false promise of giving her flat and also cheated her in connection with the said promise.

3. The learned counsel for the appellant-accused submits that in the year 2016 itself, one agreement was executed. The said agreement was executed on 30th September, 2016, wherein it has been specifically stated that the mother of the appellant-accused has

returned the amount of Rs.1,00,000/- and the balance amount of Rs.1,80,000/- will be agreed to be paid by monthly installment of Rs.10,000/- to the informant in connection with the transaction in respect of purchase of flat for an amount of Rs.2,80,000/-, which the appellant -accused had obtained from her and also there is one another document, which is titled as "*Bharna Pavati*" dated 06.02.2017, wherein the mother of the appellant had paid balance amount of Rs.1,40,000/- to the informant. The learned counsel for the appellant-accused submits that both the said agreements bears the thumb impression of the informant and both the documents were executed before the Notary. The learned counsel submits that despite executing those agreements, the informant started giving trouble to the appellant-accused. Consequently, the appellant-accused has issued legal notice on 14.02.2017 through his Advocate to the informant. The learned counsel for the appellant-accused submits that, the informant has, thus, falsely implicated the appellant-accused in connection with the present crime. There are no antecedents. The appellant-accused is ready to abide by conditions, if any, imposed by this Court. The appellant is also ready to co-operate with the investigation in the present crime. The learned counsel for the appellant-accused submits that the appellant-accused is a married

person and he is residing along with his wife, children and mother. There is no possibility of absconding.

4. The learned A.P.P. strongly resisted the Appeal on the ground that under the false promise of purchasing of flat for the informant, the appellant-accused have not only obtained the cash amount of Rs.2,80,000/- from the informant, but also shown to have performed secrete marriage with her. The learned APP submits that the appellant-accused is knowing the caste of the informant and even then committed rape on her under the false promise and also cheated her by obtaining cash amount from her.

5. The learned counsel for respondent no.2 submits that, the Special Court, while rejecting the application of the appellant-accused seeking bail, in para no.13 has observed that so far as the agreements and *Bharna Pavati* and also legal notice allegedly issued by the appellant-accused are concerned, the Investigating Officer needs to investigate the same. The learned counsel for respondent no.2 submits that so far as the document of *Bharna Pavati* is concerned, there is a reference about the relations between the informant and appellant-accused to some extent. The learned APP and learned counsel for respondent no.2 submit that in view of the

above, the custodial interrogation of the appellant-accused is necessary to find out the truth.

6. We have carefully perused the contents of the First Information Report and the police papers. The informant is 45 years of age and as stated in the complaint itself that her husband died 16 years back. There are no details as to when the appellant – accused had developed illicit relations with her by giving her promise of purchasing flat. Furthermore, it has also not stated in the complaint as to precisely when she had given amount of Rs.2,80,000/- to the appellant-accused. It is pertinent to note that at one place, the informant has made the allegations about secrete marriage performed by the appellant-accused with her and developed illicit sexual relations with her and at the same time, she has made allegations of parting the amount of Rs.2,80,000/- for purchasing the flat. It is also not clear from the allegations as to whether the appellant-accused had promised to purchase the flat for her and under that pretext developed the illicit sexual relations with her. Had it been the promise to purchase the flat for making illicit sexual relations, in that event, the informant would not have given the amount of Rs.2,80,000/- to the appellant-accused. Prima facie, we find that vague allegations

have been made in the complaint. Furthermore, the appellant-accused has placed before us a copy of the agreement of the year 2016, so also *Bharna Pavati* of the year 2017 and the legal notice issued through the Advocate in the year 2017. We refrain ourselves to make any comments on those documents. However, it is for the Investigating Officer to make an investigation with regards to those documents. However, the appellant-accused has made out a case for grant of pre-arrest bail. In the given set of allegations, the custodial interrogation of the appellant-accused is not required. There is no possibility of absconding. There is no question of tampering of prosecution evidence. By imposing certain conditions, the appellant-accused can be released on pre-arrest bail.

7. So far as the provisions of Section 18- A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are concerned, in the case of *Prathviraj Chauhan V/s Union of India and others* {(2020) 4 SCC 721}, the Hon'ble Apex Court in para 10 of the judgment has made following observations :-

“10. Section 18-A(i) was inserted owing to the decision of this Court in *Subhash Kashinath*, which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the

case of arrest of accused persons. This Court has also recalled that direction on Review Petition (Crl.) No. 228 of 2018 decided on 1-10-2019. Thus, the provisions which have been made in Section 18-A are rendered of academic use as they were enacted to take care of mandate issued in *Subhash Kashinath* which no more prevails. The provisions were already in Section 18 of the Act with respect to anticipatory bail.”

8. In the instant case, we do not think that the informant has made out a prima facie case. The appellant-accused thus entitled for pre-arrest bail. Hence the following order :-

ORDER

- (i) Appeal is allowed.
- (ii) In the event of arrest of the appellant-accused, namely, Buntty @ Bharat Mohan Achhada in connection with Crime bearing C.R. no.0368 of 2021 registered with Shrirampur City Police Station, Shrirampur, Dist. Ahmednagar for the offence punishable under sections 376, 376(2)(n) and 420 of the Indian Penal Code, 1860 and section 3(1)(w), 3(2)(5) and 3(2) (5-A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, he be released on bail on furnishing P.B. of Rs.20,000/- (Rs.Twenty Thousand) with one solvent surety of the like amount, on the following conditions :-

- (a) The appellant-accused shall not tamper with prosecution evidence in any manner;
 - (b) The appellant-accused 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 and he shall also make himself available as and when called by the Investigating Officer for making further investigation.
 - (c) The appellant-accused shall not make any attempt to contact the informant in any manner till filing of the charge-sheet.
- (ii) Appeal is accordingly disposed of.
- (iii) Since Mr.A.D. Sonar, learned counsel is appointed to prosecute the cause of respondent no.2, we quantify his legal fees as Rs.2000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(S.G. DIGE)
JUDGE

(V.K. JADHAV)
JUDGE

SGA/-