

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

CRIMINAL APPEAL NO. 357 OF 2021

Sakharam S/o Babasaheb Ghorpade
Age: 47 years, Occu: Agriculture,
R/o. : At post Pimpri Raja,
Taluka & District Aurangabad. ... Appellant

Versus

1. The State of Maharashtra.
2. Victim (first informant)
Age : 30 years, Occu.: Education,
R/o. : Pimpri Raja,
Taluka & District Aurangabad. ... Respondents

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Mr. N.S. Ghanekar, Advocate for the Appellant
Mr. R.D. Sanap, APP for Respondent No.1 /State
Ms. Shital E. Waghmare, Advocate (appointed) for Respondent
No.2

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

DATE : 21st SEPTEMBER, 2021

PER COURT:-

1. The appellant is seeking anticipatory bail in connection with crime no. 165 of 2021 registered with Karmad Police

Station, District Aurangabad for the offence punishable under Sections 376(2)(n), 323, 504, 506 of IPC and under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(2), 3(v), 3(2)(va) of S.C. and S.T. (Prevention of Atrocities)Act, 1989. His application with similar prayer came to be rejected by the Special Judge, Aurangabad by order below Exhibit-1 in Criminal Bail Application No.782 of 2021 dated 05.07.2021. The appellant has preferred this appeal in terms of the provisions of Section 14A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Learned counsel for the appellant submits that the appellant is 47 years of age. Whereas, the victim is 30 years of age. The appellant is a married person. It appears from the allegations made in the complaint that there were consensual sexual relations between the appellant and the victim. In the year 2016 i.e. on 03.06.2016, for the first time they had developed consensual sexual relations and thereafter, the said relations remained continued till filing of the complaint. Learned counsel submits that the appellant and the victim are from the same village, knowing each other since long. The

learned counsel has pointed out that though there are allegations of termination of pregnancy, however, there is no evidence about the same. There are no antecedents. The appellant is ready to co-operate with the investigation agency in carrying out further investigation into the crime. The appellant is also ready to abide by the conditions, if any, imposed by this Court.

3. Learned counsel for the appellant submits that the informant has filed the complaint in respect of the incident allegedly occurred on 27.03.2021 and on the basis of her complaint, N.C. came to be registered in the concerned police station. It has been alleged in the said complaint that appellant alongwith his family members threatened and abused her in the agricultural field. Learned counsel has pointed out that vide Exhibit F (page No.70), respondent no.2-informant has given her statement to the police stating therein that she has withdrawn the said complaint. Furthermore, on 27.03.2021, the father of the informant has given his statement denying the incident as alleged in the said N.C. complaint. Learned counsel submits that the appellant may be released on anticipatory bail.

4. Learned counsel for respondent no.2-informant submits that the allegations are severe in nature. The appellant has given false promise of marriage to respondent no.2-informant and under the pretext of false promise of marriage, developed sexual relations with her. Learned counsel submits that as per the allegations made in the complaint, the appellant has falsely performed marriage with respondent no.2-informant and even though respondent no.2-informant has conceived because of their relations, the said pregnancy was terminated by the appellant. Learned counsel submits that the appellant has thereafter denied the said marriage and also discontinued relations with respondent no.2-informant. The appellant is not entitled to be released on anticipatory bail.

5. Learned APP has strongly resisted the appeal on the ground that investigation is in progress and since registration of the crime, the appellant is absconding. Learned APP submits that in order to find out the truth in the allegations made in the complaint, custodial interrogation of the appellant is necessary.

6. We have carefully gone through the police papers, particularly, the allegations made in the complaint. It appears

that there were consensual sexual relations between the appellant and respondent no.2-informant. On 03.06.2016 i.e. 5 years back, they had sexual intercourse with consent and thereafter they used to meet at various places such as farm-house, hotel at Aurangabad etc. It has also been alleged that on 14.02.2019, the appellant had performed marriage with respondent no.2-informant in one temple of god Mahadeo at Aurangabad. However, we do not find any evidence about the same in the police papers. There are also allegations of termination of pregnancy. However, we also do not find any medical evidence in respect of those allegations in the police papers. It has been merely alleged that the appellant has given false promise of marriage to respondent no.2-informant and accordingly committed rape on her. Respondent no.2-informant is 30 years of age and she can very well know the consequences of such sexual relations with a married person. The appellant and respondent no.2-informant/victim are hailing from the same village. It is not possible that respondent-2 informant was not knowing about the marital status of the appellant. In spite of the same, respondent no.2-informant has kept the sexual relations with the appellant.

7. Thus, considering the entire aspect of the case and particularly the nature of allegations, we are inclined to release the appellant on pre-arrest bail. Furthermore, in the given set of allegations, custodial interrogation of the appellant is not necessary. Thus, by imposing certain conditions to facilitate the further investigation in the crime, this application can be disposed of. Hence, the following order:

ORDER

(I) Appeal is allowed.

(ii) In the event of arrest of the appellant-accused, namely, Sakharam Babasaheb Ghorpade in connection with Crime No. 165 of 2021 registered with Karmad Police Station, District Aurangabad for the offence punishable under Sections 376(2)(n), 323, 504, 506 of IPC and under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(2), 3(v), 3(2)(va) of S.C. and S.T. (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 in addition to that, shall make himself available as and when called by the Investigating Officer for carrying out 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 Ms. Shital Waghmare, learned counsel is appointed to prosecute the cause of respondent no.2, we quantify her legal fees as Rs.2000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE

S.P. Rane