

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

85 CRIMINAL APPEAL NO.408 OF 2021

NITIN S/O. ARJUN @ ANKUSH CHOUGULE (SHELAR)  
VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. N L Chaudhary h/f V.C.  
Patil Ashtekar

APP for Respondents: Mr. K S Patil  
Advocate for Respondent 2 : Mr K G Gaikwad Appointed

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.

Dated: December 06, 2021

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**PER COURT :-**

1. The appellant is seeking regular bail in connection with Crime No.0121 of 2021 registered with Kallam Police Station, District Osmanabad for the offence punishable under sections 376 (2) (n) of the Indian Penal Code and under section 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short SCST Act). His application with similar prayer came to be rejected by the Additional Sessions Judge-2, Osmanabad, District Osmanabad vide order dated 4.8.2021 below exhibit 3 in Special Case No.54 of 2021.

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2. In terms of the provisions of Section 14-A (2) of the SCST Act, the appellant has preferred this appeal against the said order passed by the Additional Sessions Judge-2, Osmanabad dated 4.8.2021 below exhibit 3 in Special Case No.54 of 2021.

3. The learned counsel for the appellant submits that, at present, investigation is completed and charge-sheet has been submitted. The appellant came to be arrested in connection with the present crime on 14.4.2021 and since then he is in jail.

4. Learned counsel for the appellant submits that as per the allegations made in the complaint, the appellant had given promise of marriage to the respondent no.2 and after the respondent no.2 has conceived the child, the appellant avoided to meet the respondent no.2. Learned counsel submits that respondent no.2 is a married woman, got married with one Subhash Pawar way back in the year 2009 and, she is blessed with three children out of the said wedlock with Subhash Pawar. However, her husband died some three years

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prior to lodging of the complaint and since then, respondent no.2 is residing with her father. Learned counsel submits that as per the allegations made in the complaint there were consensual relations between them. Respondent no.2 was knowing well the consequences of her act, developed relations with the appellant. Learned counsel submits that there are no antecedents. The appellant is available for trial. The appellant is ready to abide the conditions, if imposed by this court. Learned counsel for the appellant, on instructions, submits that, at present, DNA report is received and in terms of the said DNA report, appellant is the biological father of the child delivered by respondent no.2-informant. Learned counsel for the appellant, on instructions, submits that, the appellant is not denying paternity of the said child and he is ready to maintain respondent no.2 as well as said child born to her out of their consensual relations.

5. Learned counsel for the appellant, in order to substantiate his contentions, placed reliance on a

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judgment in the case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra and another** reported in 2019 ALL MR (Cri) 3949 (S.C.).

6. Learned counsel for respondent no.2 submits that the appellant had given a false promise of marriage to respondent no.2, developed sexual relations with her under that pretext and after the respondent no.2 conceived, he has avoided his responsibility and failed to fulfill his promise. Learned counsel submits that the appellant had promised to marry the complainant with an intention to deceive her. Learned counsel submits that the respondent no.2 has delivered a male child, and, as per the DNA report, the appellant is the biological father of the said child. Learned counsel submits that the appellant has failed to fulfill his promise.

7. The learned APP submits that, prima faice, there is a strong case against the appellant. The appellant has committed rape on respondent no.2 by giving her

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false promise of marriage. The appellant is not entitled to be released on bail.

8. We have carefully perused the allegations made in the complaint, so also the charge-sheet. It appears that, the respondent no.2 is a married woman. She got married with one Subhash Pawar way back in the year 2009 and she is having three children out of the said wedlock with Subhash Pawar. Said Subhash Pawar died three years back prior to the lodging of the complaint and thus respondent no.2 is residing with her father. It has been stated in the complaint that, some 10 months prior to the incident, she got acquainted with the appellant and thereafter they had a consensual relations on the count that the appellant had given her promise of marriage. Thus, believing the words of the appellant, she had developed consensual relations with him.

9. In a case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra and another** (supra), relied upon by the learned counsel for the appellant, in paragraph  
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no.18 the Supreme Court has made following observations :-

“18. To summarize the legal position that emerges from the above cases, the “consent” of a woman with respect to [Section 375](#) must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”

10. In the instant case, prima facie, it does not appear that the alleged false promise itself is an immediate relevance to bear a direct nexus to the respondent no.2’s decision to engage in the sexual act. Respondent no.2 is a woman of 28 years of age as on the date of filing of the complaint having three children out of her first marriage with said Subhash Pawar. She was well in a position to understand the nature and consequences of her act in giving consent to the appellant for the consensual relations between them. The learned counsel for the appellant, on instructions, has made a statement that appellant is not denying paternity of the said child born

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to respondent no.2 and he is ready to maintain both of them. Further, considering the nature of the allegations and since consensual act of the relations between them, we are inclined to grant bail to the appellant. The appellant is in jail for a sufficient period. He is available for trial. There are no antecedents. In view of the same, we are inclined to grant bail to the appellant. Hence, following order.

### **O R D E R**

- i. Criminal Appeal is hereby allowed.
- ii. The appellant Nitin s/o Arjun @ Ankush Chougule (Shelar) in connection with Crime No.121 of 2021 registered with Kallam Police Station, District Osmanabad for the offence punishable under sections 376 (2) (n) of the Indian Penal Code and under section 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 vide Special Case No.54 of 2021 pending before the Additional Sessions Judge-2, Osmanabad, 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 :-

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a] The appellant shall not tamper with the prosecution evidence, in any manner.

iii. Criminal appeal accordingly disposed off.

iv. Since Advocate Mr. K.G.Gaikwad is appointed to represent the cause of respondent no.2, we quantify his legal fees and expenses @ Rs.2,000/- (Rs. Two thousand) to be paid by the High Court Legal Services Sub-committee, Aurangabad.

**( SANDIPKUMAR C. MORE, J. ) ( V.K. JADHAV, J. )**

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