

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

943 CRIMINAL APPEAL NO. 611 OF 2021

LAXMAN S/O ROHIDAS BELE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Tripathi Manish P.
APP for Respondent-State : Mr. S. J. Salgare
Advocate for Respondent No.2 : Mrs. Uma S. Bhosale (appointed)

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 22nd DECEMBER, 2021

PER COURT:-

1. Heard.
2. The appellant is seeking regular bail in connection with crime no. 222 of 2021 registered with Kotwali Police Station, District Parbhani for the offence punishable under Sections 376(2)(n), 354A(1)(ii), 323, 504, 506 r/w 34 of IPC and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His application below Exhibit 1 in Criminal M.A. No. 830 of 2021 with similar prayer came to be rejected by the Additional Sessions Judge-4, Parbhani by order dated 19.11.2021.

3. In terms of the provisions of Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant-accused has preferred this appeal against the said order of rejection of bail dated 19.11.2021 passed by the Additional Sessions Judge-4, Parbhani.

4. Learned counsel for the appellant submits that at present, the investigation is over and the charge sheet has been submitted. The appellant is arrested in connection with the present crime on 03.09.2021 and since then he is in jail. There are no criminal antecedents. Learned counsel submits that it appears from the allegations made in the complaint that there were consensual sexual relations between the appellant and respondent no.2-informant. Learned counsel submits that respondent no. 2-informant is a married woman having two children from her first marriage. Even her first marriage is still subsisting. Respondent no.2-informant is a matured woman and she understands the consequences of her consensual relations with the appellant. Learned counsel has pointed out from the complaint that twice respondent no.2-informant has stayed in a rented room with the appellant. Further, though the first intercourse allegedly taken place in the year 2019, however, thereafter, their

sexual relations remained continued till filing of the complaint. Learned counsel submits that there are exaggerated allegations about false promise of marriage allegedly given by the appellant. Learned counsel submits that respondent no.2 is knowing that unless and until her first marriage is broken by a decree of divorce, she can not perform marriage with the appellant. Learned counsel submits that the appellant is ready to abide the conditions if imposed by this Hon'ble Court while releasing him on bail.

5. Learned counsel for respondent no.2 submits that even though respondent no.2 is a married woman having two children from her first marriage, however, she was residing with her parents since abandoned by her husband. Learned counsel submits that the appellant has taken undue advantage of the same and developed relations with her. There are specific allegations against the appellant that on 08.02.2019 by giving false promise of marriage, the appellant has committed sexual intercourse with respondent no.2-informant against her will. Learned counsel submits that even if consent as submitted by learned counsel for the appellant is considered, the same has been given under misconception. Learned counsel submits that respondent no.2 has believed that appellant will marry her. Learned counsel submits that the appellant by taking undue

advantage of the same, performed sexual intercourse with respondent no.2-informant by giving her false promise of marriage. Even on one occasion, the appellant and his father both have abused her on her caste basis and the appellant further declined to marry her.

6. Learned APP submits that there is a strong *prima facie* case against the appellant-accused. Respondent no.2-informant is carrying six months of her pregnancy. The DNA test cannot be carried out until the delivery. Learned APP submits that the appellant has performed sexual intercourse with respondent no.2-informant by giving her false promise of marriage time to time and even if respondent no.2-informant has consented for the same, the said consent is not consent in the eyes of law. Learned APP in the alternate submits that if this Court comes to a conclusion to release the appellant on bail, stringent conditions may be imposed. Learned APP has pointed out that the father and sister of the appellant have given threats to respondent no.2-informant for termination of pregnancy and also for withdrawal of the complaint.

7. We have carefully gone through the contents of the complaint so also the charge-sheet. *Prima facie* it appears that there were

consensual relations between the appellant and respondent-informant. Respondent-informant is a married woman having two children from her first marriage. Even though it is alleged that on 08.02.2019, the appellant has committed intercourse with respondent no.2 in her house, however, thereafter their sexual relations remained continued for a long period. Respondent no.2-informant used to travel with the appellant at various places and even twice she resided in a room taken on rent by the appellant. It further appears from the allegations made in the complaint that in the month of September 2020, even the appellant had brought his father Rohidas in the said rented room to meet respondent no.2-informant. Though respondent no.2-informant has made certain allegations against the father of the appellant, however, it appears that the appellant had taken his father to respondent no.2 for initiation of talks. Respondent no.2-informant is a matured woman. She is a married woman having two children from her first marriage and admittedly her first marriage is still subsisting. Respondent no.2-informant must be knowing that she cannot perform marriage with the appellant during subsistence of her first marriage. Respondent no.2-informant must be knowing the consequences of her consensual relations with the appellant. Thus, considering the entire aspect of the case, by imposing certain conditions, we are inclined to release the appellant on bail. We are

inclined to impose stringent conditions since learned APP has brought to our notice that the father and the sister of the appellant have given threats to respondent no.2-informant for termination of pregnancy and also for withdrawal of the complaint. So far as the DNA report is concerned, even if the report comes positive, the same would confirm about the paternity of the appellant with the baby. However, considering the nature of the allegations, we are inclined to release the appellant on bail by imposing certain conditions. Hence, we proceed to pass the following order:

O R D E R

- I. The appeal is hereby allowed.
- II. The appellant-accused Laxman s/o Rohidas Bele in connection with crime no. 222 of 2021 registered with Kotwali Police Station, District Parbhani for the offence punishable under Sections 376(2)(n), 354A(1)(ii), 323, 504, 506 r/w 34 of IPC and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on bail on furnishing P.B. of Rs.25,000/- with one solvent surety of the like amount on the following conditions:

- a. The appellant shall not tamper the prosecution

evidence in any manner.

- b. The appellant shall not make any attempt to meet or contact respondent no.2-informant in any manner till disposal of the special case no. 131 of 2021.
- c. The appellant shall also take care that in future no threats will be given to respondent no.2-informant on any count either for termination of pregnancy or otherwise till disposal of special case no. 131 of 2021
- d. The appellant shall not enter within the limits of Parbhani City till disposal of special case no. 131 of 2021, except for attending court dates.
- e. The criminal appeal is accordingly disposed off.

8. The counsel representing respondent no.2 is the appointed counsel. Thus, we quantify the legal fees of the appointed counsel at Rs.3,000/- (Rupees three thousand only) to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)