

CRIMINAL APPEAL NO.374 OF 2020

]... Appellant/Accused.

Versus

1]	The State of Maharashtra	]
	(At the instance of Vartaknagar	]
	Police Station, Thane) Notice to be	]
	served on APP, AS, Bombay High Court	]
		]
2]	XYZ	]... Respondents.

**Mr. Keshav Chavan i/by Mr. Viresh V Purwant for the Appellant.
Mr. J P Yagnik, APP for the Respondent No.1/State.
Mrs. Mallika Ingale – Advocate appointed for Respondent No.2.**

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
DATE : 16th MARCH 2021

P.C.

1 At the outset it is required to be noted that since the allegations
against the Appellant are in respect of the alleged sexual assault, and the 2nd
Respondent is victim/prosecutrix, the identity of the Appellant and Respondent
No.2 as also the prosecution witnesses needs to be concealed, and therefore,
the Appellant herein is referred to as “ABC”, Respondent No.2 is referred to as
“XYZ” and the prosecution witnesses are referred to as “D, E, F etc.” The
Registry is directed to maintain the record accordingly.

2 By this Criminal Appeal the Appellant, who is the original

Accused, takes exception to the order dated 13/02/2020 passed by the learned Additional Sessions Judge, Thane, at Thane in Criminal Misc. Bail Application below Exh.4, by which order the application of the Appellant for releasing him on regular bail in Sessions Case No.27 of 2020 came to be rejected.

2 The factual matrix giving rise to filing of this Criminal Appeal can be stated thus :-

The Appellant herein is the accused in the FIR lodged by the Respondent No.2/Prosecutrix at Vartaknagar Police Station being C. R. No.I-319 of 2019 dated 16.11.2019 for the offences punishable under sections 376, 417 of Indian Penal Code and under sections 3(1)(r)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities)(Amended) Act 2015. The Respondent No.2 has studied up to 12th Standard and is unemployed. Her father is carpenter and mother is housewife. Her sister and brother are taking education. The Appellant, who is residing within the vicinity of Respondent No.2, was introduced with the Respondent No.2 by his friend about 4 years prior to the alleged incident. Thereafter the Appellant and the Respondent No.2 became friends, which converted into love affair. Her friend "D, who is one of the prosecution witnesses, was aware about their love affair. The Appellant gave assurance of marriage with Respondent No.2, and therefore, they had gone to Titwala in the year 2018, and in January, February 2019. There they usually halted in Riya Raj Lodge at Titwala. It is alleged that every

time the Appellant assured her that he would marry with her, and thereby had physical relationship with her. In May 2019 she realized that she missed her menstrual cycle, and therefore, she informed the Appellant. The Appellant gave her a pill for termination of pregnancy but the same did not work. When she informed the said fact to the Appellant and her friend "D", the Appellant assured her not to worry and he would marry with her soon and not to disclose the said fact to anybody. She got scared and did not disclose the said fact to anybody. During such period she became pregnant of 7 months from the Appellant. In September 2019, the mother father, grandmother and maternal uncle of the Respondent No.2 came to know about the said fact. Therefore, the mother took her to the doctor, who examined her and told that the Respondent No.2 is pregnant. It is alleged in the FIR that the victim belongs to Scheduled Caste. Subsequently the Appellant avoided to marry with her. Hence, as stated herein above, she lodged FIR being C. R. No.I-319 of 2019 dated 16.11.2019 registered with Vartaknagar Police Station, for the offences punishable under sections 376, 417 of Indian Penal Code and under sections 3(1)(r)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities)(Amended) Act 2015.

4 After filing the impugned FIR, the Appellant came to be arrested and after initial police custody, the Appellant was remanded in MCR. After completion of investigation charge-sheet came to be filed.

5 Thereafter the Appellant had filed an Application under Section 439 of the Criminal Procedure Code for regular bail in the said CR No.319 of 2019 registered with Vartaknagar Police Station for the offences punishable under sections 376, 417 of Indian Penal Code and under sections 3(1)(r)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) (Amended) Act 2015. The learned Additional Sessions Judge, Thane considering the material on record and also considering the gravity of the alleged crime, rejected the said bail application. Being aggrieved by the said order dated 13/02/2020 passed by the learned Additional Sessions Judge, Thane, the Appellant preferred this Criminal Appeal.

6 The learned counsel appearing for the Appellant submitted that the Appellant is innocent and has not committed any crime as alleged by the prosecution and that he has been falsely implicated in the crime on suspicion. It is also submitted that, the investigation is completed and charge-sheet is filed and, if the Appellant is released on bail, he will not jump the bail or tamper with the prosecution witnesses. It is also submitted that, the Respondent No.2 admitted to have love affair with the Appellant and, the first incident of physical relation took place in 2018 and the last incident of physical relation took place in February 2019, therefore, there is a delay in lodging the complaint which is filed on 16/11/2019. It is further submitted that the

Appellant and Respondent No.2 were knowing to each other and there was love affair between them, which fact is admitted by the Respondent No.2 in the FIR. The Respondent No.2 is major and the physical relation took place with her consent and therefore in the facts of the present case, the provisions of Section 376 of the Indian Penal Code are not attracted as the statement of the Respondent No.2 itself shows that the alleged act is consensual and not forcible. He, therefore, submitted that the material collected by the Investigating Officer does not make out any offence either under Indian Penal Code or under the Act of SC/ST (Amended Act). In support of his contentions, the learned counsel appearing for the Appellant relied upon the judgment of this Court at Nagpur Bench in the case of Vishal s/o. Omprakash Verma v/s. The State of Maharashtra and anr.¹ He lastly submitted that the learned Additional Sessions Judge, Thane erred in rejecting the application for bail by the impugned order dated 13/02/2020.

7 On the other hand, the learned counsel Mrs. Mallika Ingale, who is appointed to represent the Respondent No.2 in this Appeal, submitted that from the statements of witnesses, particularly statement of friend “D”, statement of co-worker “E”, and the statement of PSI of Vartaknagar Police Station “F”, it is revealed that on the pretext of performing marriage with the Respondent No.2, the Appellant committed sexual intercourse with her. It is also revealed from the statements of the witnesses that the Appellant has given

¹ 2021 ALL MR (Cri) 187.

assurance to the Respondent No.2 to marry with her and, when the Respondent No.2 requested him to perform the marriage, he refused to marry with her. The learned counsel for the Respondent No.2 further submitted that if the Appellant is released on bail, there is danger to the life of the Respondent No.2 and her parents. She also submitted that there is also possibility of Appellant's fleeing away, if he released on bail. She, therefore, prays that the Appeal may be dismissed.

8 The learned APP appearing for the Respondent/State submitted that the allegations levelled against the Appellant are serious in nature and there is enough material on record against the Appellant. He, therefore, prays that the Appeal may be dismissed.

9 Heard the learned counsel appearing for the parties. With the able assistance of the learned counsel appearing for the parties, we have perused the pleadings and the grounds taken in the Criminal Appeal and the annexures thereto.

10 In so far as the contention of the learned counsel appearing for the Appellant that, the Appellant is innocent and he is falsely implicated in the crime is concerned, there is a material on record in the form of statements of the prosecution witnesses. The witness "D", who is the friend of Respondent

No.2, has stated in her statement that, the Appellant gave assurance of performing marriage with the Respondent No.2 and that, the Appellant and the Respondent No.2 had gone to Titwala in the year 2018 and in January February 2019 and stayed in Riyaraj Lodge, and on the pretext of performing marriage with the Respondent No.2, the Appellant kept physical relation with the Respondent No.2 from time to time. This witness "D" also stated that when the Respondent No.2 informed the Appellant about missing of her menstrual cycle, the Appellant gave her a pill for termination of pregnancy, however, it did not work. This witness also stated that thereafter the Appellant avoided to perform marriage with the Respondent No.2. She stated about the incident of threatening the mother of the Respondent No.2 by the mother of Appellant.

11 The witness "E", who was working with the Appellant in Lodha, stated in his statement recorded by the police during the course of investigation that, he was called in the police station and there he was informed that the Appellant kept physical relations with the Respondent No.2 and she was pregnant of 7 months from the Appellant, and the Appellant would perform marriage with the Respondent No.2. He further stated that 15 days time was given to the Appellant for that purpose, hence the Appellant was released. It is clear from the perusal of the the statement of this witness that before the police also the Appellant has shown his willingness to marry with the Respondent No.2 within 15 days.

12 During the course of investigation, a statement of Police Sub Inspector - "F" has also been recorded. She stated that on 31/10/2019 the Respondent No.2 along with her mother came to the police station. At that time the Respondent No.2 informed that the Appellant kept physical relation with her on the assurance of performing marriage with the Respondent No.2 and she is pregnant of 7 months from the Appellant, and that, the Appellant is not ready to marry with her. This witness also stated that in the cabin of Senior Police Inspector, the Appellant has told that within 15 days after consulting his family members, he would marry with the Respondent No.2. Therefore, the Respondent No.2 did not lodge complaint against the Appellant. This witness further stated that thereafter again on 16/11/2019 the Respondent No.2 came to the Police Station for lodging the complaint against the Appellant, as the Appellant refused to marry with her and he was absconding. And therefore the Respondent No.2 lodged the complaint against the Appellant.

13 We have carefully perused the statements of witnesses recorded by the police. From the perusal of the statements of the witnesses it is revealed that the Appellant is not ready to marry with the Respondent No.2 and, on the assurance of performing marriage with the Respondent No.2, he kept physical relation with her. Though, according to the learned counsel appearing for the

Appellant, it is a consensual relations, we are not in agreement with the said contention. Prima facie it appears that the Appellant committed sexual intercourse with the Respondent No.2 on the pretext of performing marriage with her, however, thereafter he avoided to fulfill his assurance. Even before the police the Appellant agreed to perform marriage with the Respondent No.2 within 15 days, however, he did not fulfill that assurance also. From the statements of the witnesses and the material on record, it is crystal clear that the motive of the Appellant was to have sexual intercourse with the Respondent No.2 by cheating her and giving false promise of marriage.

14 Prima facie, in our opinion, the version of the Respondent No.2 in the FIR gets corroboration from statements of the witnesses recorded by the investigating agency, and from the material on record. The allegations levelled against Appellant are serious in nature. Though in the present case the investigation is over and the charge-sheet is filed, the fact that cannot be lost sight of is, the mother of Appellant went to the home of the Respondent No.2 and threatened the mother of Respondent No.2.

15 In the light of aforesaid discussion, we find substance in the submission made by the learned counsel appointed to represent the Respondent No.2 that, if the Appellant is released on bail, there are chances of his fleeing away from the trial and threatening the prosecution witnesses and

tampering with the evidence of prosecution. The Trial Court, after considering the material on record, has rightly rejected the bail application of the Appellant. In the facts and circumstances of the present case, we find no substance in this Criminal Appeal.

16 For the reasons stated herein above, the Criminal Appeal stands dismissed. However, we direct the Additional Sessions Judge, Thane to frame the charge if already not framed and commence the trial and complete the same as expeditiously as possible, however within a period of eight months from today.

17 We appreciate the able assistance given by learned counsel Mrs. Mallika Ingale, appointed to represent the 2nd Respondent in this Criminal Appeal. We quantified her fees at Rs.10,000/-, to be paid by High Court Legal Services Committee, Mumbai within a period of four weeks from the receipt of this order.

18 The observations made in the judgment are prima facie in nature and confined to the adjudication of the present Criminal Appeal. The Trial Court shall conduct the trial in accordance with law and uninfluenced by the observations made herein above.

[MANISH PITALE, J]

[S. S. SHINDE , J]