

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.211 OF 2021

[Rameshwar s/o Bhaskar Chavhan .vs. The State of Maharashtra, through PSO, PS Buldhana City,
District-Buldhana and one]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.B. Jawade, Advocate for appellant,
Ms Shamsi Haider, APP for respondent no.1-State,
Shri Sunil Bhuyar, Advocate for respondent no.2.

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CORAM : N.B. SURYAWANSHI, J.
DATED : JUNE 21, 2021.

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this appeal, filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant challenges the order passed by the learned Additional Sessions Judge, Buldhana in Criminal Bail Application No.105/2021, thereby rejecting the application filed by the appellant under Section 438 of the Code of Criminal Procedure.

3. The informant lodged F.I.R. alleging that the appellant has committed offences under Section 376 (2) (n) of the Indian Penal Code and under section 3 (1) (w) (i) and 3 (1) (w) (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the basis of the same, Crime No.263/2021 was registered with Buldhana City Police Station.

4. It is the prosecution case that the appellant is working in Indian Army. There was a love affair between the appellant and the victim. The appellant promised to marry the victim. Thereafter, thrice the appellant established physical relations with the victim against her wish. The victim thereafter came to know that the appellant is engaged with other girl and was not ready to marry with her, she therefore lodged the FIR.

5. Heard the learned advocate for the appellant, the learned Additional Public Prosecutor for the respondent no.1-State and the learned advocate for the respondent no.2. Perused the case diary made available by the learned APP.

6. Admittedly, the victim is major and she was having love affair with the appellant. Perusal of the FIR and the investigation papers *prima facie* indicate that the allegations of the victim that physical relations were kept without her consent appear to be after thought.

7. It has come in the affidavit-in-reply filed by the investigating officer that during verification of the caste certificate of the victim, it is revealed that no caste certificate is issued to the victim. The caste certificate belonging to Scheduled Caste has been issued in the name of other girl namely, Jyoti Ashok Kankad.

8. *Prima facie*, no ingredients of offence under the provisions of Section 3 (1) (w) (i) and 3 (1) (w) (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out in the FIR.

9. The appellant was granted interim anticipatory bail, vide order dated 21.5.2021. The appellant is serving in Army and it is stated by the learned Advocate for the appellant that after attending the Police Station in terms of the interim order passed by this Court, the appellant has resumed his duty in Kashmir. It is not disputed that the appellant has attended the Police Station and has cooperated in the investigation.

10. The learned APP, however, makes a statement that the cell phone of the appellant needs to be recovered.

11. In view of the fact that there is no *prima facie* case made out and the custodial detention of the appellant is not necessary, the following order is passed :

O R D E R

(i) The impugned judgment and order passed by the learned Special Court – Additional Sessions Judge, Buldhana in Criminal Bail Application No.105/2021 is hereby quashed and set aside.

(ii) The interim anticipatory bail granted to the appellant by this Court, vide order dated 21.5.2021 is

confirmed, on that condition that the cell phone of the appellant having no.9596939208 be surrendered to the investigating officer, within a period of two weeks from today.

(iii) The appellant shall not make any attempt directly or indirectly to influence the witnesses or to tamper with the prosecution evidence.

(iv) Criminal Appeal stands disposed of.

(N.B. Suryawanshi, J.)