

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**CRIMINAL APPLICATION (APPA) NO. 448/2020
IN
CRIMINAL APPEAL NO. 321/2019**

Anmolkumar S/o Ashok Tiwari,
Aged about 31 years, Occ. Service
in Military Department, 4 Corps & Svl
Unit PIN 904904, C/o 99 APO Native
Place, R/o Bhimnagar Ward No. 2,
Buldana, Tq. & Dist. Buldana

.... **APPELLANT**

// VERSUS //

- 1] State of Maharashtra,
through Police Station, Buldana (City),
Dist. Buldana
- 2] Ku. Ujwala Dhanu Sakhare,
Aged about 30 years, Occ. Service
R/o Vidarbha Housing Society,
Junagaon, Buldana,
Tq. & Dist. Buldana

.... **RESPONDENT(S)**

Shri A.J. Thakkar, Advocate for the appellant
Shri T.A. Mirza, APP for the respondent no. 1
Ms. H. Dhande, Advocate (appointed) for the respondent no. 2

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
DATED : 05/01/2021

- 1] For the reasons stated in the application and accepting the explanation given in the application, the appellant is permitted to incorporate the amendment proposed by the criminal application.

2] The criminal application is **allowed** accordingly.

3] The amendment be carried out today itself failing which learned advocate for the appellant shall deposit Rs. Five Thousand per day for the delay from tomorrow onwards till the amendment is carried out.

CRIMINAL APPEAL NO. 321/2019

ORAL JUDGMENT : (PER:- Z.A. HAQ, J.)

4] Heard.

5] **ADMIT.**

6] Crime No. 85/2019 is registered against the appellant with the respondent no. 1 – Police Station for the offences punishable under Sections 376(2)(n) and 420 of the Indian Penal Code and Sections 3(1)(w)(i) & (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989"). The crime is registered against the appellant on the report lodged by the respondent no. 2 – victim alleging that on promise of marriage, the appellant sexually exploited her. The appellant had moved an application under Section 438 of the Code of Criminal Procedure for grant of pre-arrest bail before the Sessions Court which is rejected by the impugned order.

7] The prayer of the appellant is opposed by the respondents on the ground that the appellant cannot be granted pre-arrest bail in view of the bar created by Section 18-A of the Act of 1989. It is further submitted on behalf of the respondents that the facts of the case also dis-entitles the appellant from pre-arrest bail, specially considering that the appellant is a married person.

8] With the assistance of learned advocate for the appellant, learned APP and learned advocate for the respondent no. 2, we have examined the material placed on record of the appeal.

9] According to the respondent no. 2 – victim (aged about 30 years), the appellant (aged about 31 years) developed physical relationship with the respondent no. 2 because of which she became pregnant and was required to undergo abortion and after the abortion was undertaken, the appellant refused to marry the victim. The accusations in the report show that the appellant and respondent no. 2 – victim were in relationship since 2012 onwards.

10] The first information report came to be registered on 21/02/2019. There are no accusations in the report lodged by the

respondent no. 2 – victim on the basis of which it can be said that any offence punishable under the Act of 1989 is committed by the appellant. At the time of hearing, learned APP and learned advocate for the respondent no. 2 – victim submitted that the offences punishable under Sections 3(1)(w)(i) & (ii) of the Act of 1989 are added subsequently as the respondent no. 2 – victim belongs to Scheduled Caste. In our view, this cannot be the reason *prima-facie* to hold against the appellant and refuse to consider the prayer made by the appellant for grant of pre-arrest bail. In the facts of the case, the bar created by Section 18-A of the Act of 1989 would not be attracted and the prosecution will have to prove its case regarding the offences punishable under Sections 3(1)(w)(i) & (ii) of the Act of 1989 at the trial. On facts, we find that according to the respondent no. 2 – victim she had been in relationship with the appellant since 2012 and the report is lodged on 21/02/2019. The appellant and respondent no. 2 – victim are major. The appellant is granted protection by this Court by the order dated 23/04/2019. Neither the respondent no. 1 – State nor the respondent no. 2 – victim have made any grievance that the appellant has misused the protection granted by this Court. The respondent no. 1 – Investigating Agency has not been able to show that custody of the appellant is required. The appellant is working with the Indian Army and has stated that any other crime is not registered against him.

11] In the above facts, the following order is passed:-

- a) The impugned order is set aside.
- b) Interim order passed by this Court on 23/04/2019 granting pre-arrest bail to the appellant is confirmed on the same terms and conditions.

The appeal is **allowed** accordingly.

Fees of the advocate appointed to represent the respondent no. 2 be paid as per the Rules.

JUDGE

JUDGE