

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 8 OF 2021

APPELLANT :-

Mayur S/o Vijay Mahore, Age : 25 years,
Occupation : Job, R/o. Plot No.19,
Navneet Nagar, Near Arvind Hair Saloon,
Amravati Road, Wadi, Nagpur.

...VERSUS...

RESPONDENTS :-

1. The State of Maharashtra, Through
Police Station Officer, Police Station
Wadi, Nagpur.
2. Ku. Rohini D/o Milind Gadkari, Age : 24
years, Occupation : Nil, R/o. Plot No.77,
Navneet Nagar, Near Sai Mandir,
Amravati Road, Wadi, Nagpur.

None for the applicant.

Mr. T.A.Mirza, A.P.P for the respondent No.1.

None for the respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 31.03.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. ADMIT.

3. This is an appeal under section 14-A of the Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

challenging the order dated 11/12/2020 passed by the Additional Sessions Judge-11, Nagpur in Miscellaneous Criminal Application No.3236 of 2020 rejecting pre-arrest bail application of the appellant.

4. The First Information Report came to be registered against the appellant with the accusations that the appellant and the respondent No.2 were in relationship from January, 2016. It is further alleged that the appellant had committed forcible sexual intercourse with the respondent No.2 from time to time and thereafter refused to marry with the respondent No.2 on the ground that the respondent No.2 belongs to backward class. It is further alleged that since the respondent No.2 was under the impression that the appellant shall perform marriage with the appellant, the appellant did not adopt legal proceedings against the appellant. It is alleged that the appellant abused respondent No.2 in the name of caste and committed forcible sexual intercourse with the respondent No.2 from July, 2018 till 18/06/2020 from time to time. The First Information Report came to be registered against the appellant on 28/08/2020.

5. The appellant, therefore, filed Miscellaneous Criminal Application No.3236 of 2020 under section 438 of the Code of Criminal Procedure on 01/02/2020. By the impugned order dated 11/12/2020, the application of the appellant under section 438 of the Code of Criminal Procedure was rejected by the learned Additional Sessions Judge-11, Nagpur. The appellant has therefore filed the present appeal.

6. This Court on 06/01/2021 issued notice to the respondents and protected the appellant by granting provisional bail.

7. The respondent No.2 has filed reply contesting pre-arrest bail application of the appellant by stating that there is ample material available with the prosecution to show involvement of the appellant in the crime alleged against the appellant. It is stated that the appellant abused the respondent No.2 in the name of her caste.

8. Though the respondent No.2 is served in the present matter, neither the respondent No.2 has appeared personally in the Court, nor appeared through an Advocate.

9. We have carefully considered the allegations in the First Information Report. On scrutiny of the First Information Report, it appears that the appellant and the respondent No.2 were knowing each other from January, 2016. The appellant is aged about 25 years and the respondent No.2 is aged about 24 years. As per the allegation in the First Information Report, the appellant had forcible sexual intercourse with the respondent No.2 from July, 2018 till 18/06/2020. The report is lodged on 28/08/2020. The prosecution has not pointed out that after granting of interim protection by order dated 06/01/2021, the appellant has misused the liberty granted to him.

10. Insofar as allegations in respect offences under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, the accusations are vague in nature. *Prima facie* allegations in the First Information Report does not disclose fulfillment of ingredients of offence alleged against the appellant. We, therefore, satisfied that the order of interim protection dated 06/01/2021 passed by this Court deserves to be confirmed.

11. We, therefore, pass the following order:

- i) The impugned order dated 11/12/2020 passed by the learned Additional Sessions Judge-11, Nagpur in Miscellaneous Criminal Application No.3236 of 2020, is quashed and set aside.
- ii) The order granting provisional bail dated 06/01/2021 is hereby confirmed, subject to the conditions stated in the said order.

12. The criminal appeal is allowed in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

Ghanshyam
Khunte

Digitally signed by
Ghanshyam Khunte
Date: 2021.04.06
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