

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

CRIMINAL APPEAL NO.489 OF 2021

Shaikh Irfan @ Monu s/o Shaikh
Shafi.

.. Appellant

Versus

State of Maharashtra and one

.. Respondents

Mr. H.M. Mohta, Advocate for appellant,
Ms. M.A. Barabde, APP for respondent no.1.

**Coram : M.S. Sonak and
Pushpa V. Ganediwala, JJ.**

Date : December 20, 2021.

P.C.

Heard Mr. H.M. Mohta, learned counsel for appellant and Ms. M.A. Barabde, learned A.P.P. for respondent no.1.

2. This is an appeal against order dated 17.11.2021 made by the learned Additional Sessions Judge, Akola in Misc. Criminal Application No.944/2021 rejecting the appellant's anticipatory bail.

3. The record bears out that the appellant and respondent no.2 knew each other and or rather had an affair which involved physical relations for over last six years. Respondent no.2 has stated that the complaint is filed

because the appellant is now refusing to marry her. No doubt, there are some allegations about her consent for physical relations being secured on the promise of marry. These allegations will have to be gone into, but at least in present case, we do not think that incarceration of the appellant is necessary for such investigation.

4. The learned Sessions Judge has, in fact, recorded that though the FIR does not make reference to any overt act on the part of the accused by addressing the victim by her caste, the learned Sessions Judge infers that since the appellant knew respondent no.2 for such a long time, he must be presumed to be aware of caste of respondent no.2. According to us, such a presumption cannot always be drawn against an accused persons and based thereon, the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act invoked to deny the accused anticipatory bail.

5. In this case, there was an affidavit filed by respondent no.2 retracting allegations in her complaint. However, later point of time, this affidavit itself was sought to be withdrawn or rather, the contentions therein were sought to be retracted. The relationship spread over almost six years is admitted by the complainant.

6. Having regard to above aspects, we think that a case has been made out for grant of anticipatory bail by setting aside the impugned order dated 17.11.2021. We therefore allow this appeal in the following terms :-

(i) The impugned order dated 17.11.2021

is set aside.

(ii) In the event of appellant being arrested, he shall be released on bail, subject to following conditions :-

(a) The appellant will have to execute P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(b) The appellant will have to make himself available for investigation or as and when called by the investigating agencies.

(c) The appellant will not flee from justice or otherwise tamper with the evidence or the witnesses. In particular the appellant will make no attempt whatsoever to exert any pressure on respondent no.2 or otherwise interfere with her.

(d) Till the chargesheet or appropriate report is filed, the appellant will have to report to the concerned Police Station once a week i.e. every Monday between 11.00 am and 12.00 noon.

(iii) The appeal is disposed of in the aforesaid terms.

(iv) Pending applications, if any, also stand disposed of.

Pushpa V. Ganediwala, J.

M.S. Sonak, J.