

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

CRIMINAL APPEAL NO.743 OF 2019

APPELLANT : Yogesh s/o Rajendra Upadhyay,
Aged about : 28 years, Occu.
Private Job, R/o Ward No.5,
Samrat Nagar, Nandafata,
Tah. Korpana, Distt. Chandrapur.

V E R S U S

RESPONDENTS : 1. State of Maharashtra,
Through Police Station Officer,
P. S. Gadchandur, Tq. Korapana,
District - Chandrapur.

2. Ku. Komal Dhanpal Kale,
Aged about : 26 years, Occ. Teacher,
R/o Nandafata, Post Nanda,
Tah. Korapan, District - Chandrapur.

Shri R. M. Patwardhan, Advocate for appellant.
Ms. Mayuri Deshmukh, Additional Public Prosecutor for
respondent No.1-State.
Ms. Aarti Singh, Advocate (Appointed) for respondent No.2.

CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.
DATED : 06/01/2021.

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 24/10/2019 passed by the Additional Sessions Judge, Chandrapur in Bail Application No.1167/2017 in connection with Crime No.415/2019 for the offences punishable under Section 376 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The First Information Report came to be registered against the appellant on 02/10/2019. The accusation in the First Information Report is to the effect that the appellant sexually exploited the respondent No.2 on the promise of marriage. In the First Information Report, it is alleged that the appellant was in relation with the respondent No.2 for 5 years prior to lodging of the First Information Report. The appellant, therefore, filed an application under Section 438 of the Code of Criminal Procedure before the learned Sessions Judge, Chandrapur. By the impugned order, the learned Sessions Judge, Chandrapur rejected the pre-arrest bail application of the appellant, mainly on the ground

that Section 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 prohibits grant of anticipatory bail. The appellant, therefore, filed this appeal before this Court. This Court on 13/11/2019, granted protection to the appellant on the condition as stated in the said order. This Court on 13/11/2019 issued notice to the respondents. The respondent No.1 has filed reply and has contested the appeal by stating that considering the gravity of the offences registered against the appellant, the appellant is not entitled to protection from this Court.

5. It is submitted by the learned advocate for the appellant that during the pendency of the present appeal, the Appellant and Respondent No.2 have approached this Court by way of application under Section 482 of the Code of Criminal Procedure for quashing of the First Information Report and the said application is pending.

6. We have gone through the contents of the First Information Report and the impugned order. From the accusations in the First Information Report, it appears that the appellant was

in relation with the respondent No.2 for 5 years before lodging of the First Information Report. From the contents of the First Information Report, prima facie, it does not appear that the appellant had forcibly committed sexual intercourse with the respondent No.2. In so far as the allegations in the First Information Report, we find that the allegations in the First Information Report, prima facie, do not attract the ingredients of the offence under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant, in para 16 of the appeal, has stated that the appellant has no criminal antecedents. The prosecution has not pointed out that the appellant has misused the liberty granted to him by the order dated 13/11/2019. The prosecution further has not pointed out that the custodial interrogation of the appellant is necessary.

7. We, therefore, pass the following order.

ORDER

I] The impugned order dated 24/10/2019 passed by the Additional Sessions Judge, Chandrapur in Bail Application No.1167/2017 is quashed and set aside.

II] The order of this Court dated 13/11/2019 granting interim protection to the appellant is hereby confirmed on the same condition.

The appeal is allowed in the above terms.

8. Fees of the Advocate appointed to represent the respondent No.2 be paid as per the rules.

JUDGE

JUDGE

Choulwar