

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

CRIMINAL APPEAL NO. 650 OF 2021

Shahebaz s/o Saleem Pathan
(Shahabaz Kha s/o Saleem Kha Pathan),
age: 22 years, Occ: Mason Work,
R/o Beside Vithbhatti Nala, Deopur,
Dhule, District Dhule.

Appellant

Versus

01 The State of Maharashtra
through Police Station,
Deopur, Dhule, District Dhule.

02 XYZ

Respondents

Mr. U. B. Bilolikar, advocate for the appellant
Mr. R. D. Sanap, APP for Respondent No.1.
Ms. Ashwini A. Lomte, advocate holding for Ms. Ashlesha Kulkarni,
advocate (appointed) for Respondent No.2.

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 13th January, 2022.

PC :

1 By consent of learned Counsel for respective parties,
appeal is heard finally at the stage of admission.

2 The appellant-accused is seeking bail in connection
with Crime No.0168/2021, registered with Deopur Police Station,

Taluka and District Dhule, for the offences punishable under Section 376, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3 (1) (w) (i) (ii), 3 (2), 3(1) (r), 3 (1) (w), 3 (2) (va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. His application with the similar prayer for bail came to be rejected by the Additional Sessions Judge, Dhule, by order dated 25.11.2021, below Exhibit-3 in Special Case No. 113 of 2021. Hence, in terms of Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant has preferred instant appeal for bail.

2 Learned Counsel for the appellant submits that the victim is 21 years of age as on the date of alleged incident and as stated in the complaint itself, there was love affair between the informant-victim and the appellant. The appellant has allegedly given promise of marriage to the informant victim, which, he has not followed later on. The learned Counsel submits that the victim is a college going student and she understands consensual relations with the appellant. There are false allegations about the incident allegedly taken place on 03.09.2021 at about 10.00 p.m.

3 The learned Counsel for the appellant, on instructions,

submits that the family members of the appellant are ready to perform marriage of the appellant with the informant-victim and hence brother of the appellant, namely Samir Kha s/o Salim Kha Pathan has filed an affidavit today before this Court. It has been specifically stated in the affidavit that on 12.01.2022 at about 11.50 a.m., the deponent brother had a talks with the appellant, who is in jail and the appellant told him that he is ready and willing to perform marriage with the informant-victim. It is further stated in the affidavit that the deponent-brother and their mother, being the family members, have no objection for the said marriage. Learned Counsel for the appellant submits that the appellant is in jail in connection with the said Crime since 08.09.2021. There are no antecedents. Even in the given set of allegations, the appellant is entitled to be released on bail.

4 Ms. Ashwini Lomite, learned Counsel holding for Ms. Ashlesha Kulkarni, advocate (appointed) for Respondent No.2, submits that the appellant has committed rape on the informant victim under the pretext of false promise of marriage with her. The learned Counsel submits that even on one occasion, the appellant has tried to break the proposal of marriage of informant-victim. Even on 03.09.2021 at about 11.00 p.m., the appellant and his

parents have called the informant-victim and abused her by referring to her caste. The learned Counsel submits that there is no substance in the appeal and the same is liable to be dismissed.

5 The learned A. P. P. submits that there is a *prima facie* strong case against the appellant. The medical certificate also supports the allegations made by the informant-victim, who is the unmarried college going student. The learned A. P. P. submits that the appeal is liable to be dismissed.

6 We have carefully gone through the allegations made in the complaint and also perused the charge sheet. It appears that there was love affair between the appellant and the informant-victim. The informant-victim is 21 years of age as on the date of filing of the complaint. It further appears from the contents of the complaint that there were consensual relations between them. It has been alleged in the complaint that the appellant has given promise of marriage to the informant-victim to the effect that he would perform marriage with her after the marriage of his sister. Meanwhile, marriage of the informant-victim was fixed by her parents with one Anil Shamrao Wagh of Surat, however, the present appellant allegedly sent his friends to said Anil Wagh and

informed him about the love affair between the appellant and informant-victim. Thus, the said marriage proposal was broken. Had it been a false promise of marriage, the appellant would not have sent his friends to Surat to break the marriage of informant-victim with said Anil Wagh. Further, brother of the appellant, namely Samir Kha s/o Salim Kha Pathan has also filed an affidavit after he contacted his brother on phone i.e. appellant in the jail. The appellant told him that he is ready and willing to perform marriage with the informant-victim. Other family members of the appellant also do not have any objection for the marriage of appellant with informant-victim.

7 Thus, considering the entire aspects of the case and since the appellant is in jail for a considerable time, we do not think that his further detention in jail is necessary.

8 Hence, we proceed to pass the following order:

(i) Criminal Appeal is hereby allowed.

(ii) The appellant Shahebaz s/o Saleem Pathan (Shahabaz Kha s/o Saleem Kha Pathan), arrested in connection with Crime

No.0168/2021, registered with Deopur Police Station, Taluka and District Dhule, for the offence punishable under Section 376, 504, 506 read with Section 34 of the Indian Penal Code and under Section 3 (1) (w) (i) (ii), 3 (2), 3(1) (r), 3 (1) (w), 3 (2) (v) (a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, and in connection with Special Case No.113 of 2021, pending before the Additional Sessions Judge, Dhule, be released on bail on furnishing P. R. bond of Rs 25,000/- (Rs. Twenty Five thousand) with one solvent surety in the like amount.

9 We quantify legal fees and expenses of the learned Counsel appointed for Respondent No.2 at Rs.2000/- (Two thousand) to be paid by the High Court Legal Services Sub-Committee at Aurangabad Bench.

10 Criminal Appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE

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