

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.136 OF 2022

Anil Khandu Patil	 Appellant
Versus	
State of Maharashtra & Another	 Respondents

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Mr. Ibrahim Shaikh, Advocate a/w Sachin Godse, for the Appellant.
Ms. P.P. Shinde, APP, for Respondent No.1-State.
Ms. Priyaka Chavan, Advocate for the Respondent No.2.

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**CORAM : R. D. DHANUKA AND
M. G. SEWLIKAR, JJ.**

DATE : 27th JUNE, 2022

ORAL ORDER : [PER M.G. SEWLIKAR, J.]

1. This Appeal is preferred under Section 14-A of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the order passed for rejection of bail.

2. The facts leading to filing of the present Appeal are that the Appellant is an electrician. One Santosh Pawar is the

neighbour of the informant. The Appellant had gone to the house of Santosh Pawar for electricity fitting. The Appellant and the informant got acquainted with each other and their relationship blossomed into love. It is alleged that the Appellant promised the informant to marry her and on that false promise of marriage established physical relations with her. The first instance of physical relations was in the month of June, 2018. Thereafter on many occasions, they repeated these acts. This relationship continued from June, 2018 to December, 2020. The Appellant kept on avoiding to marry the informant on the ground that his sister was till then not married. After the marriage of the sister, the Appellant refused to marry the informant in the month of December, 2020 on the ground that the informant belongs to scheduled caste. On these allegations, the FIR came to be lodged on 5th July, 2021 and offence came to be registered under Section 376(2)(n) of the Indian Penal Code and under Section 3(1)(w)(i) (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The charge-sheet has been filed.

4. Learned Additional Sessions Judge, Panvel, District-Raigad declined to release the Appellant on bail. This order was passed on 1st December, 2021. This order is under challenge in this Appeal.

5. Learned Counsel Mr Ibrahim Shaikh for the Appellant would submit that the informant has alleged that on the false promise of marriage, the Appellant established sexual relations with the informant. He would submit that this question can be gone into during trial. He further submits that the prosecution itself is not certain whether refusal on the part of the Appellant to marry informant was on account of low caste or on account of some other cause.

6. Learned Counsel Ms Priyanka Chavan for the respondent No.2 submits that the sexual relations established by the Appellant were on the basis of false promise of marriage. She submits that the Appellant had promised to marry but he resiled from his promise on the ground that the informant was of low caste. She submits that this clearly indicates that the Appellant

had no intention to marry her client right from the inception.

7. Learned A.P.P. Smt. Shinde for the State submits that the relatives of the Appellant had threatened the informant and on that count the non-cognizable cases have been registered. She submits that because of this, the Appellant is not entitled to be released on bail.

8. Section 90 of the Indian Penal Code defines “consent”. If the consent is given under the misconception of facts then it is not a consent in the eye of law. In the case at hand, it is alleged by the informant that the Appellant had sexual relations with her as the Appellant had promised to marry her. Subsequently, he resiled from his promise. However, the witness of the prosecution by name Santosh Patil has given statement that the Appellant had taken the informant for *Ganpati* darshan when she had abused the Appellant and for this reason their relations came to an end. Thus, prosecution itself is not certain as to whether the Appellant refused to marry the informant on account of her low caste or on account of her abusive nature. In view of this at this *prima facie*

stage it cannot be decided as to whether the consent was given out of misconception of facts. It cannot be decided whether the Appellant had the intention to cheat the informant right from the inception. These questions can be gone into during trial.

9. So far as the non-cognizable cases registered against the the Appellant's relatives are concerned, the Appellant can be released on bail by putting some stringent conditions. The Appellant is behind bars for close to one year. The trial is not likely to complete in near future. The Appellant cannot be incarcerated indefinitely.

10. In this view of the matter, we deem it appropriate to release the Appellant on bail. Hence, the following order:

ORDER

- (i) Appeal is allowed.
- (ii) In connection with C.R. No.I 20/2021 registered with Mora Sagri Police Station, Navi Mumbai, the Appellant be released on bail on his furnishing PR bond in the sum of

Rs.30,000/- (Rupees Thirty Thousand Only)
with one solvent surety in the like amount, on
condition that the Appellant shall not keep any
relation with the informant and shall not enter
into the village till the conclusion of the trial
and shall not pressurize the witnesses.

(iii) Criminal Appeal stands disposed off
accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
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(M. G. SEWLIKAR, J.)

(R. D. DHANUKA, J.)

Deshmane (PS)