

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

CRIMINAL APPEAL NO.768 OF 2022

Wasimraja Nabilal Shaikh Appellant

Vs.

The State of Maharashtra and Anr. Respondents

Mr. Ritesh Thobde for the Appellant.

Mr. S. S. Pednekar, APP for Respondent-State.

Mr. Hrishikesh Shinde for Respondent No.2.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 18th AUGUST 2022.

P. C.

1. Heard learned counsel for the parties.

2. By this appeal, preferred under section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, the appellant seeks pre-arrest bail in connection with C.R. No.463/2022 registered with the Sadar Bazar Police Station, Solapur, for the alleged offences punishable under sections 354(A), 376(2)(n), 506 of the IPC and

under Sections 3(1) (s), 3(2)(5) and 3(2) (va) of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Amendment Act 2015.

3. Learned counsel for the appellant submits that a perusal of the FIR itself will indicate that the relationship between the appellant and the prosecutrix was consensual in nature. He further submits that the appellant and the prosecutrix met in 2015 and thereafter, they travelled to various places together and that it is only in June'2022 that the prosecution lodged an FIR, when the appellant refused to marry her.

4. Learned counsel appearing for Respondent No.2 opposes the application. He submits that the appellant had promised marriage and that on the pretext of marriage, the appellant established physical relationship with the Respondent No.2. He further submits that post the FIR, two NC's have been lodged by the prosecutrix, as against the appellant, as the appellant had threatened her to withdraw the case.

5. Learned counsel for the Appellant refuted the said allegations. He submits that the NCs so registered, have been lodged malafidely, so that bail is denied to the appellant.

6. Learned APP opposed the bail application.

7. Perused the papers. According to the prosecutrix, aged 26 years, an MBA graduate, she got acquainted with the appellant in the year 2015. She has alleged that although the appellant had proposed marriage, she refused the same, thereafter, the appellant and she became friends and they started exchanging messages. According to the prosecutrix, during the period from 2016-2019 the appellant took her to various places and had physical relations with her, on the pretext of marriage. She has also alleged that the appellant abused her in the name of her caste, when she asked the appellant to marry her and the appellant sometime in December 2016, even threatened to kill her. She has further stated that even after the appellant's marriage in 2018, the appellant continued to meet her. The prosecutrix has further alleged that in 2020 during the lockdown when she had gone to Pune, the appellant had called her and while returning to Solapur, the appellant had taken her to a

lodge at Solapur, where he had physical relations with her. It appears that the appellant had purchased a property in which the prosecutrix is a witness. Since the seller of the said property was not genuine, it appears that a criminal case was registered as against the appellant and the prosecutrix and both, i.e the appellant and the prosecutrix have been granted pre-arrest bail in the said case.

8. *Prima facie*, it appears that there was a consensual relationship between the appellant and the prosecutrix from 2015-2022. It also *prima facie* appears, that as the appellant failed to marry the prosecutrix, the present complaint was lodged. It also appears that even after the appellant's marriage in 2018, the relationship between the appellant and the prosecutrix continued, although, according to the prosecutrix it was against her wish. Having regard to the FIR, *prima faice*, no offence under the SC ST Act, as alleged, is made out as against the appellant.

9. Considering what is observed hereinabove, the appellant has *prima facie* made out a case for grant of pre-arrest bail. Accordingly, we pass the following order :

(i) The appeal is allowed and the impugned order dated 25/7/2022 passed by the learned Sessions Judge, Solapur in Criminal B. A. No.919/2022 is quashed and set aside;

(ii) In the event of arrest, the appellant be released on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(iii) The appellant shall not contact the prosecutrix or any other witness concerned with the said case.

(iv) The appellant shall attend the concerned Police Station, as and when called, till the filing of charge-sheet.

10. The Appeal is disposed of in the aforesaid terms.

11. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J. REVATI MOHITE DERE, J.