

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.963 OF 2021

Rupesh Suresh Koli : Appellant.
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Rahul Arote for the Appellant.
Mr. Y M Nakhwa, APP for Respondent No.1/State.
Ms. Jai V Kanade, advocate appointed for Respondent No.2.
Mr. Sharad Barkade, API, Khandeshwar Police Station, present.

CORAM : S. S. SHINDE,
SARANG V. KOTWAL, JJ
DATE : 27th April 2022

P.C.

1 This is an Appeal filed by the Appellant against the order dated 30/10/2021 passed by the Ad-hoc Addl. Sessions Judge-1 Panvel, Raigad thereby rejecting the application filed by the Appellant for anticipatory bail.

2 By this Appeal, the Appellant is seeking anticipatory bail in connection with Crime No.206/2021 registered with Khandeshwar Police Station on 18/09/2021 under Section 376(2)(n), 313, 323 and 147 of the Indian Penal Code r/w Section 3(1)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

3 The FIR was lodged by the prosecutrix on 18/09/2021, who was at the relevant time 23 years of age. She stated that she was belonging to scheduled caste. She was residing with her mother, sister and cousin. Two

years prior to lodging of the FIR, she got acquainted with the Appellant through a social networking site. Their acquaintance turned into close friendship. It is her case that, in 2019, the Appellant proposed marriage to her. The first informant accepted his proposal. Around November 2019 onwards the Appellant established physical relations with her at different places. When the informant's mother asked the Appellant about the marriage, at that time he promised to marry the informant after the lock-down ended. In December 2019, the informant got pregnant. At that time, when informant asked the Appellant about the marriage, he promised to marry her at the earliest and gave her pills causing miscarriage. Their physical relations continued, and in April 2021 she again got pregnant. At that time also, the Appellant pressurized her for abortion. Thereafter the behaviour of the Appellant changed and he started assaulting her. Whenever the informant asked the Appellant about the marriage, he used to promise that he would marry her. However, their last physical relation was on 29/08/2021. On 06/09/2021 he assaulted the informant and therefore the informant lodged a complaint with Khandeshwar Police Station and, on the next day of the complaint, the Appellant sent a message to her that he would not marry her. Thereafter he blocked her mobile number and was not available. Therefore she lodged the FIR on 18/09/2021.

4 We have heard Mr.Rahul Arote, learned counsel for the Appellant, Mr. Y M Nakhwa, learned APP for the Respondent/State and Ms. Jai Kanade,

learned counsel appointed for Respondent No.2.

5 Learned counsel appearing for the Appellant submitted that it was a case of purely consensual relationship, and hence no offence is made out. The Appellant is in the employment of Police Department, and his arrest will affect his career. He submitted that even the Appellant was of a tender age at the relevant time. He further submitted that though the FIR is not clear about his intention to marry the informant, even then the fact remains that there was a consensual relationship between them and therefore no offence is made out against the Appellant. Learned counsel for the Appellant, in addition, submits that the parties have settled the matter between them.

6 Learned counsel appearing for Respondent No.2 and the learned APP appearing for the Respondent/State submitted that the Appellant never intended to marry the informant which clear from the F.I.R. The offence is made out against him. Both of them further submitted that as the informant belongs to Scheduled Caste, the offence under the SC & ST Act is made out, and hence there is legal bar for granting anticipatory bail. Considering the fact that the appellant never intended to marry the informant and gave false promises, no leniency can be shown to him. The offence is serious and therefore anticipatory bail cannot be granted to the appellant.

7 The learned counsel appearing for the Respondent No.2 invited
our attention to the affidavit filed on behalf of the informant and in particular
to paragraph 2. It was mentioned that the appellant was pressurizing and
threatening the informant to withdraw the criminal case.

8 We have considered the submissions of the learned counsel for the
parties, and with their assistance perused the contents of the FIR and material
on record.

9 It appears that the physical relations between Appellant and the
informant were going on for a long time but they were based on the promise of
marriage given by the appellant to her. Subsequently he did not take steps to
marry her. His subsequent conduct shows that the appellant never intended to
marry her right from the inception. When the mother of the informant asked
the Appellant about the marriage, at that time also the appellant promised to
marry the informant. Thereafter Appellant started assaulting the Appellant
and ultimately told her that he would not marry her and blocked her mobile
number. Apart from that, as discussed earlier, the physical relations were
established on the basis of promises given by the appellant to her and those
were under misconception of facts and thus it cannot be the free consent as
defined under Section 90 of the Indian Penal Code.

10 In so far as the submission of the learned counsel for the Appellant
that the parties have settled the matter between them is concerned, in the
background of the averments made in the affidavit filed on behalf of the
informant, possibility of pressurizing the informant to settle the matter, cannot
be ruled out.

11 Hence no case is made out. The Criminal Appeal is dismissed.

12 It is made clear that these observations are made only for deciding
this appeal.

[SARANG V. KOTWAL, J]

[S. S. SHINDE , J]