

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

CRIMINAL APPEAL NO. 441 OF 2022.

Mr. Vishwanath Anna Karnar,
Aged : 24 years, Occ. : Service, CISF, GOI,
R/At – Village, Dahegaon,
Post – Vadali Bk. Tal. Nandgaon, Nashik,
At Present Posted At - CISF Unit, IOCL
P Box No.1, Mundra DS-Bhuj, Gujrat. **APPELLANT**

----- **VERSUS** -----

1. State of Maharashtra,
Through Senior Inspector,
Rajapeth Police Station, Amravati,
Wide C.R. No.308/2022.
2. Ku. XYZ,
C. R. 308/2022,
Rajapeth Police Station, Amravati. **RESPONDENTS**

Mr. J. R. Avhad, Advocate for the Appellant.
Ms H. Jaipurkar, A.P.P for the Respondent/State.
Mr. S. B. Gandhe, Advocate for Respondent No.2.

CORAM : AMIT B. BORKAR, J.

DATE : 02.08.2022.

ORAL JUDGMENT :

1. Heard.
2. **ADMIT.**
3. This is an appeal under Section 14-A of the
Schedule Castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 filed by the appellant challenging the rejection of an application under Section 438 of the Code of Criminal Procedure arising out of First Information Report bearing No.308/2022 registered with Respondent No.1 – Police Station for the offences punishable under Sections 376, 417, 504 of the Indian Penal Code read with Section 3(2)(va) of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The First Information Report came to be registered against the appellant with the accusations that the appellant and respondent No.2 were in a relationship and out of the said relationship on 04.11.2021 there was forcible sexual intercourse by the appellant with respondent No.2. It was alleged that it was due to the false promise made by appellant to respondent No.2 that he will perform marriage with her, they had sexual intercourse. Since thereafter, appellant refused to marry respondent No.2; the First Information Report came to be registered against appellant for the offences punishable under Sections 376, 417 and 504 of the Indian Penal Code.

5. The learned Sessions Judge rejected the application under Section 438 of the Code of Criminal Procedure on 29.06.2022 considering the bar under the

provisions of the Act, and *prima facie*, it was found that the ingredients of Section 3(2)(v) would apply to the present case.

6. This Court, by *ad interim* order dated 13.07.2022, granted interim protection to the appellant. The learned Advocate appearing for respondent No.2 has no objection to continuing the said relief. Undisputedly, the liberty granted to the appellant has not been misused by the appellant. On considering the allegations in the First Information Report and considering the ratio of the Hon'ble Apex Court in the case of ***Pramod Suryabhan Pawar Vs. The State of Maharashtra and Ors.*** reported in ***(2019) 9 SCC 608*** and in particular paragraph No. 18 of the said judgment, which reads as under :

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

7. Considering the above observations, the appellant has made out a case for confirmation of *ad interim* relief.

Resultantly, I pass the following order :

ORDER

- i] The appeal is allowed.
- ii] The impugned judgment and order passed by the learned Additional Sessions Judge, Amravti, in Criminal Bail Application No.642/2022, is quashed and set aside.
- iii] The *ad interim* protection granted by the order dated 13.07.2022 is confirmed subject to the same terms and conditions stated in the said order.

(AMIT B. BORKAR, J.)

RGurnule