

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

CRIMINAL APPEAL NO. 592 OF 2022.

APPELLANT : Mukesh Suresh Ihare, Aged about 26 years,
Occupation – Education, resident of
Dehani, Taluq Digras, and District
Yavatmal.

VERSUS

RESPONDENTS : 1.State of Maharashtra, through Police
Station Officer, Arni, Taluq Arni, District
Yavatmal.

2.XYZ, Crime No.592/2022, through Police
Station Arni, Taluq Arni, District Yavatmal.

Shri S.V. Sirpurkar, Advocate for the Appellant.
Shri A. Chutke, A.P.P. for Respondent No.1.
Ms.K. Waware, Advocate [Appointed] for Respondent No.2.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.

DATE : OCTOBER 14, 2022.

ORAL JUDGMENT : (PER VINAY JOSHI, J)

This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, challenging the order of rejection of bail dated 16.08.2022 passed by the Additional Sessions Judge, Dharni in Misc. Criminal Bail Application No.143/2022.

2. By consent of the learned Counsel appearing for the respective parties, Appeal is taken up for final disposal at the stage of admission.

Admit.

3. The appellant came to be arrested in connection with Crime No.592/2022 for the offence punishable under Sections 366, 376[2][j], [n], 323, 506 of the Indian Penal Code, and Section 3[1][W][i][ii] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as “the Atrocities Act” for short). It is the prosecution case that the victim has been sexually abused by the accused under the pretext

of marriage. The informant lady aged 21 years stated that she had acquaintance with the accused who is resident of the same village. The accused has expressed his love and then they were in relationship. The accused promised her to marry on which both ran away to Pune, where they had sexual relations. Since the accused refused for marriage, report has been lodged.

4. The informant is major lady of 21 years. It is evident that both were in love relationship and at her volition, informant ran away with the accused. Both of them went to Pune and stayed for two days. The statement of victim recorded by the Magistrate in terms of Section 164 of the Code, discloses that on the following day i.e. on 06.07.2022, both returned from Pune, however, family members of victim refused to accept her. Though bail is resisted on the ground that consent was under misconception of facts, it is a matter of trial. Since the victim was major and voluntarily went with the accused out of love relationship, only aspect of scrutiny is whether the consent was obtained by deceitful means.

5. It is not the case that the accused was already a married fellow, but, he is also young boy of 26 years. It is a matter of trial whether since inception the accused carried a deceitful intention. Breach of promise and false promise are two different aspects.

6. Already investigation is completed and charge sheet has been filed. Having regard to above facts, a case is made out for grant of bail. Needless to mention that the above observations are made only for the purpose of deciding the present appeal, which will have no implication while deciding the matter on merits. The appeal deserves to be allowed, and we do so accordingly. Hence the following order.

ORDER.

- (i) Criminal Appeal is allowed.
- (ii) The impugned order dated 16.08.2022 passed by the Additional Sessions Judge, Darwha in Criminal Bail Application No.143/2022, is hereby quashed and set aside.

- (iii) The appellant Mukesh Suresh Ihare be released on bail in connection with Crime No.592/2022 for the offence punishable under Sections 366, 376[2][j], [n], 323, 506 of the Indian Penal Code, and Section 3[1][W][i][ii] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on his executing PR. bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iv) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (v) Fees of the appointed counsel for respondent no.2 be paid as per Rules.

JUDGE

JUDGE