

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

...

CRIMINAL APPEAL NO. 594/2022

Sanket s/o Sanjay Channe

.. Appellant

versus

1) The State of Maharashtra and another

.. Respondents

.....
Mr.D.V Chauhan, Advocate for the appellant

Mr.V.A.Thakre, APP for respondent 1

Mr., C.F Bhagwani, Advocate for respondent 2
.....

CORAM: ROHIT B.DEO &
ANIL L.PANSARE, JJ.

DATED : 28th September, 2022.

P.C. :

Having heard both sides and having gone through the contents of the FIR, it appears to us that the appellant and the respondent no.2 were in relationship for a considerable period i.e. from 13th May 2020 to 12th June 2022. The FIR also discloses that the appellant met mother of respondent no.2 and conveyed his intention to marry her.

2. On 07.09.2022, following interim order as passed :-

“ *Heard Shri Chavan, learned counsel for appellant.*

2. *Issue notice to the respondents, returnable on 21.09.2022.*

3. *Shri Thakare, learned APP waives notice for*

respondent no.1.

4. *The appellant is seeking to quash and set aside the order dated 30.08.2022 passed by Additional Sessions Judge, Nagpur in Criminal Misc. Application No. 1967/2022, rejecting anticipatory bail application filed by the appellant. It appears from the impugned order that the application seeking anticipatory bail has been rejected in view of bar under section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.*

5. *From the record, it is evident that the appellant and the informant were in a relationship and had sexual intercourse with consent for couple of years. The allegations of rape has been levelled when relations became strained. We are prima facie of the view that there is an arguable case for the appellant on the point as to whether ingredients of Section 376 (2)(n) of the Indian Penal Code will be attracted in the present case.*

6. *In view thereof, we felt it appropriate to protect the appellant during the pendency of the present appeal. Hence, we pass the following order:-*

ORDER

(I) *During the pendency of the present appeal there shall be interim relief in the following terms :*

(ii) *In the event of arrest of the appellant-Sanket Sanjay Channe in connection with Crime No.390/2022, registered with Police Station, Wadi, Nagpur for an offence punishable under section 376(2)(n) and 417 of the Indian Penal Code and sections 3 (2)(v), 1, 3(r) (s), and 3 (2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he shall be released on bail on he executing PR bond in the sum of Rs.15,000/- with one solvent surety in the like amount.*

(iii) *The appellant shall attend Police Station as and*

when called and shall cooperate in the investigation.

(iv) The appellant shall not tamper with the prosecution evidence and also shall not influence the prosecution witnesses.”

3. The learned Advocate for the appellant is correct in contending that both the appellant and the respondent 2 are adult and had consensual physical relationship. The FIR, by itself does not *prima facie* indicate that the consent has been obtained or that the consent is given by the informant on the misconception of fact or that the appellant had no intention, right at the inception of relationship, to marry the respondent no.2.

4. In view thereof, we are of the considered view that the interim relief granted by us on 07.09.2022 should be made absolute and is made absolute accordingly.

5. Criminal Appeal is disposed of.

[ANIL L. PANSARE, J.]

[ROHIT B. DEO, J.]

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