

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

CRIMINAL APPEAL NO.749/2022

Rajesh S/o Rameshrao Shirbhate,
aged about 36 years, occu.: Service,
R/o. Milind Society, Near Athavadi Bazar,
Yavatmal, Taluka and District Yavatmal. **APPELLANT**

// VERSUS //

1. The State of Maharashtra, Through
Police Station Officer, Police Station Avadhutwadi,
Taluka and District Yavatmal.
2. ABC (Victim), Police Station Avadhutwadi,
Dist. Yavatmal (F.I.R.) No: 926/2022) **RESPONDENTS**

Shri. A. S. Manohar, Advocate for appellant.
Shri. A. M. Kadukar, APP for respondent/State.
Ms. R. G. Nitnaware, (Appointed) Advocate for respondent No.2.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.
DATED : 16/11/2022

ORAL JUDGMENT : [PER: VINAY JOSHI, J.]

1. Heard.
2. **ADMIT.** Heard finally by consent of the learned counsel appearing
for the parties.

3. Refusal for grant of bail by Special Court vide order dated 17.10.2022 in Criminal Bail Application No.410/2022 gave rise to this appeal in terms of Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant (accused) is seeking to set aside the impugned order and virtually claims for pre-arrest protection.

4. The victim lady aged 39 years has lodged the report on 29.09.2022 for the offence punishable under Sections 376 and 324 of the Indian Penal Code and Sections 3(2), 3(2)(va), 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to “the SC/ST Act”), which has been registered as Crime No.926 of 2022 with the Police Station Avdhutwadi, District Yavatmal. It is victim’s case that she happened to got acquainted with accused prior to two years. There causal acquaintance has turned into love relationship. The victim was frequently visiting to the house of accused. She stated that since the wife of accused was staying somewhere else for the purpose of job, she went to the house of accused on 28.09.2022 around 9.15 a.m. She has questioned the accused as to why he was not responding her telephone calls. She also asked as to why he is not marrying and why he has concealed her marital status. According to the victim, the accused

assaulted her by means of tea cup and started to abuse likewise mother of accused also abused her in filthy language. Victim stated that for the period from September 2020 to 28.09.2022, the accused has established physical relationship under the false pretext of marriage. Victim also stated that as she was in visiting terms at the house of accused everything was known to the mother of accused. Since she has been sexually exploited by accused, she lodged a report.

5. The learned counsel appearing for accused denied the sexual relations, however, in the alternative submitted that at the most it is a case of consensual relationship in between two adults. It is pointed that the victim is well grown up educated lady of 39 years having adequate understanding about the consequences, of her act. It is argued that the victim was regularly visiting to the house of accused therefore, she was well aware about the marital status of accused meaning thereby, the story of concealment of marriage is improbable.

6. On the point of applicability of the provisions of the SC/ST Act, it has been submitted that the alleged incident was in the house of accused therefore, the essential ingredients to constitute offence punishable under Section 3(1)(r) and (s) are missing, as the occurrence was not at the place within the public view. He would submit that merely because the victim belongs to the member of Scheduled Caste or

Scheduled Tribe, that by itself does not attract provisions of Section 3(2)(w)(i) in absence of intention. To substantiate above submission he has placed reliance on certain decisions of Hon'ble Supreme Court and this Court.

7. The learned APP as well as learned counsel Ms. Nitnaware put resistance to this appeal. It is submitted that the contents of the FIR specifically carves out a case of sexual assault upon false promise. It is submitted that the accused was well aware about the caste of victim and thus statutory bar under Section 18-A would apply. The learned APP added that the victim was medically examined on the following day and found some injuries at her hand and thus there is corroborative material. Besides that, it is submitted that the accused is pressurizing the victim for withdrawal of report and therefore, it is not in the interest of justice to grant him pre-arrest protection.

8. With the assistance of both sides, we have gone through the contents of the FIR. The appellant is public servant serving in Food and Supply Office. It reveals from the FIR itself that both had acquaintance from the two years preceding the occurrence. The victim stated that out of there acquaintance love relationship was developed. Victim stated that always she was in visiting terms at the house of accused. In the wake up of such statement, submission that the victim was aware about

marital status of accused carries substance. It is not the case that the accused has kept everything in dark and met victim at some distant places to conceal his status. FIR bears repeated reference that victim was always visiting to the house of accused as well as also met his mother which carries substance.

9. The learned counsel for the appellant would submit that, the victim was desiring for allotment of Food Distribution Center for which she had applied in the office of accused. He stated that the victim was pressurizing for allotment, out of which she assaulted him for which he lodged a report one day preceding to this occurrence. We have given our thoughtful consideration to the facts which emerges from the FIR. It is apparent that the victim was well educated grown up lady and as per her contention she was making preparation for competitive examinations conducted by MPSC. Since she had love relationship as well as frequenting at the house of accused, *prima facie* her contention about suppression of marital status by accused appears to be improbable. The victim has stated about abuses and remark on caste by accused and his mother at their resident. Apparently the residential house cannot be termed as a place within the public view. In order to meet the requirement of Sub-clause (r) and (s) of Section 3(1) of the SC/ST Act, both ingredients about the place and presence of some strangers is

essential. *Prima facie* it appears that essential ingredients are lacking to constitute the offence punishable under Section 3(2)(v)(a) of the Act.

10. Our attention has been invited to the decision of Hon'ble Supreme Court in case of ***Hitesh Verma vs. State Uttarakhand and another (2020) 10 SCC 710***, whereas it has been expressed that merely because the victim belongs to Scheduled Caste, would not be enough to constitute the offence under the Special Act. It is observed in para 18 of the decision that offence under the act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. Reading of the entire FIR, nowhere conveys that only because the victim belongs to the member of Scheduled Castes/Scheduled Tribes, the accused has committed the atrocities. Rather FIR gives impression that there was accidental acquaintance in between them on which they developed love relationship. Moreover for continuous two years, the victim was in visiting terms at the house of accused meaning thereby she knows the nature and consequences.

11. In view of above, we are satisfied that no *prima facie* case is made out to attract the case of SC/ST Act and therefore, the statutory

bar would not apply. As regards to the rest of the allegations *prima facie* it reveals that there was consensual relationship between two matured adults. Moreover, we find no reason to have custodial interrogation. Certainly the liberty of appellant/accused can be protected by securing the interest of prosecution, by putting him on certain terms, so that the process of investigation would go on smoothly. In view of that appeal deserves to be allowed, and we allow accordingly.

12. The impugned order dated 17.10.2022 in Criminal Bail Application No.410/2022 is hereby quashed and set aside.

13. In the event of arrest of the appellant, namely, Rajesh S/o Rameshrao Shirbhate, he shall be released on bail on his furnishing PR bond in the sum of Rs.25,000/- with one or two sureties in like amount.

14. The appellant shall attend concerned Police Station on every Sunday and Wednesday in between 10.00 a.m. to 12.00 noon till filing of the charge-sheet.

15. The appellant shall not tamper the prosecution evidence nor try to contact the victim in any manner.

16. Breach of either of the conditions would give rise to the prosecution to move this Court for cancellation of pre-arrest protection.

17. The observations made herein above are restricted to the extent of deciding this appeal which has no impact on the merits of case.

18. Fees of appointed Advocate be paid as per rules.

19. Appeal stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Sarkate.