

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 17 OF 2023

. Sajid Khan s/o Rafik Khan Pathan,  
Age: 21 years, Occu: Labour,  
R/o Jawala Panchal,  
Tq. Kalamnuri, Dist. Hingoli

**. . . Appellant**  
(Orig. Accused)

***Versus***

1. The State of Maharashtra,  
Through Police Station Akhada Balapur  
Dist. Hingoli.

2. X. Y. Z.

**. . . Respondents**  
(R.2 Orig. Informant)

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Mr. H. I. Pathan, Advocate for the Appellant.  
Mrs. Preeti Diggikar, APP for Respondent No.1-State.  
Mr. R. C. Bora, Advocate for Respondent No.2 (appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND  
ABHAY S. WAGHWASE, JJ.**

**DATED : 03 FEBRUARY 2023**

**JUDGMENT (PER ABHAY S. WAGHWASE, J.) :**

. Admit.

2. Present appeal has been filed by original accused, who is implicated in Crime No.519 of 2022, registered at Akhada Balapur Police Station, Tq.Kalamnuri, Dist. Hingoli for commission of offence under Sections 376(2)(n), 506 of Indian Penal Code (IPC) and under Sections 3(1)(w) and 3(2)(v)

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC & ST Act'). He is challenging the rejection of his bail application under Section 439 of the Code of Criminal Procedure by the learned Additional Sessions Judge-3, Hingoli on 23.12.2022.

3. Heard learned Advocate for the appellant, learned APP for respondent No.1 State and learned Advocate for Respondent No.2.

4. Learned Advocate for the appellant pointed out that report came to be filed at the instance of present respondent No.2 alleging that she was acquainted with accused while undergoing education and gradually love developed between them. He has pointed out that thereafter, her parents started looking for suitable match for her and therefore, she herself approached accused appellant expressing that she cannot live without him and so suggested to run away. Thereafter, on her own, she came to the appellant and they went upto Parbhani and from there they reached Aurangabad. That subsequently she has alleged that in Aurangabad there was physical contact between them. From there, they went to Faridabad (Delhi) and they stayed in the house of acquaintance of appellant. There also there was physical contact between them. But according to him, there was never any forcible act or against will or consent of informant. False allegations are levelled that accused forced her to get converted to Muslim religion and only then he would

perform Nikah with her.

5. Learned Advocate for the appellant further pointed out that from the FIR it is clear that, there was long standing acquaintance followed by love affair. That informant respondent No.2 had willingly accompanied accused and rather suggested fleeing away because she had started receiving marriage proposals. That she had stayed in the company of accused at various places for long period. That whatever physical contacts developed in between them were consensual and were not against her will, wish or by force. That applicant is behind bars since November 2022. Nothing is to be discovered or recovered from him. Almost entire investigation is over and therefore, he had preferred bail application before learned trial Judge but the same was unfortunately rejected and hence, present application. Learned Advocate submitted that he is ready to abide by all and any conditions imposed by this Court and consequently, prayed to allowed the present appeal.

6. While opposing the bail application, learned APP took us through the FIR and submitted that offence is serious. Respondent No.2 victim is still undergoing education. That considering seriousness of the matter, if appellant is released on bail, he is likely to misuse liberty and tamper with the evidence. There are other allegations under the SC and ST Act. Investigation is still underway and yet to be completed and therefore, it is not fit case for grant of

bail.

7. We have gone through the FIR dated 18-11-2022 at the instance of respondent No.2. Its length and breadth shows that both accused and informant were taking education in same college. During co-education, they seem to have got acquainted with each other. Informant herself admits that their acquaintance developed into love affair. Subsequently, we find her informing that marriage proposals were brought by her family members. Informant claims that she informed this fact to the appellant and that they both decided to run away and resultantly, on 08-07-2022 they went to Parbhani and from there to Aurangabad. Her FIR shows that they stayed in a lodge and there she claims that accused kept physical relations with her. She subsequently alleges that on 09-07-2022 from Aurangabad they left to Faridabad (Delhi) and after reaching there on 11-07-2022, they stayed in the house of one Pinky Devi, who allowed them to occupy one room in their house. That time also she alleges that during their stay of 8 to 10 days, there were physical relations between them. It seems that said Pinky Devi also arranged one room for them where they lived for 20 to 22 days. It is at this juncture she claims that she questioned accused when they would get married, and according to her, he started avoiding. But according to her, he continued to become intimate with her and therefore, she insisted for marriage and so he assured her to perform marriage and accordingly, took her to an Advocate

where a contract of live-in-relationship was drawn. It seems that she and applicant both caused signatures over the contract and came back to Parbhani. In the FIR itself she states that after returning to Parbhani, they appeared before Akhada Balapur Police Station and she gave statement that she wanted to reside with him. She has alleged that at the said place also for a month or so she was raped by accused and thereafter, he asked her to get her religion converted and to perform Nikah as per Muslim rituals to which she claims was not agreeable too and therefore, she called her brother and returned back to her parents place and thereafter, report seems to have been lodged.

8. From the above discussed FIR, it is clearly emerging that respondent no.2 is educated young lady. She admits her love relations with accused and also seems to have left her own house and family members and accompanied accused at various places since 08-07-2022. Though at the end she claims that she was raped, her initial version shows that she was the consenting party as there is no whisper about forcible sexual intercourse against her will or wish i.e. during stay at lodge, in the room of Pinky Devi or in a rented room occupied at the instance of Pinky Devi. Rather even after returning back to Parbhani, she did not go to her house and rather stayed with accused. Such material indicates and is sufficient to draw inference that *prima facie* there is no offence of rape. Accused seems to have been behind bars since November 2022.

9. While making submissions learned APP has not opposed bail application on specific ground on requirement of accused for further investigation. Resultantly we are of the opinion that his further custody is no more required. Taking into account the contents of the FIR and above discussion, we feel it to be a fit case to grant bail and accordingly, we pass the following order :

**ORDER**

- (i) The appeal stands allowed.
- (ii) The order passed by the learned Additional Sessions Judge-3, Hingoli in Criminal Bail Application No.433 of 2022 dated 23-12-2022 stands set aside. The application stands allowed.
- (iii) Appellant Sajid Khan s/o Rafik Khan Pathan, who has been arrested in connection with Crime No.519 of 2022 registered with Akhada Balapur Police Station, Dist.Hingoli, for the offence punishable under Sections 376(2)(n), 506 of IPC and under Sections 3(1)(w)(ii), 3(2)(v) of the SC and ST Act, be released on bail on PR.Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- (iv) The appellant shall not enter the jurisdiction of Redgaon, Akhada Balapur, Tq.Kalamnuri, Dist.Hingoli till the conclusion of the trial. He should reside elsewhere and before submission of bail papers, the appellant should give complete address of his proposed residence with his Mobile number to the trial Court as well as to the Investigating Officer.

- (v) The appellant shall attend concerned Police Station on every Monday and Wednesday between 10:00 a.m. to 02:00 p.m.
- (vi) Appellant shall not tamper with the evidence of the prosecution in any manner.
- (vii) Appellant shall not indulge in any criminal activity.
- (viii) Bail before the trial Court.
- (ix) Fess of the learned Advocate, who is appointed to represent the cause of respondent no.2 is quantified at Rs.5,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

**(ABHAY S. WAGHWASE, J.)**

**(SMT. VIBHA KANKANWADI, J.)**

SPT