

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.197 OF 2023

DADARAO S/O MOHAN TAUR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr. M. P. Kale, Advocate for appellant.
Mr. R. D. Sanap, APP for respondent No.1 – State.
Mr. A. V. Lavte, Advocate for respondent No.2 (Appointed).
...

**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 24th April, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed by the appellant under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) to challenge the order of rejection of his bail by the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Majalgaon, Dist. Beed in Criminal Bail Application No.59 of 2023 under Section 439 of the Code of Criminal Procedure on 23.02.2023. The present appellant has been arrayed as accused in Crime No.19 of 2023 registered with Majalgaon City Police Station, Dist. Beed for the offence punishable under Sections 376(2)(n), 417 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act. He came to be

arrested on 13.12.2023.

2. Heard learned Advocate Mr. M. P. Kale for the appellant, learned APP for respondent No.1 – State and learned Advocate Mr. A. V. Lavte for respondent No.2 (Appointed).

3. It has been vehemently submitted on behalf of the appellant that respondent No.2 – original informant is 30 years old married lady. Her marriage with another person had taken place in the year 2006. She had two sons, one is aged 10 and another was aged 8, however, the eight years old son died in 2016. He was killed by her husband and in that proceedings her husband has been convicted. Thereafter, she left the matrimonial home and started residing with her mother. She took up job in 2021 as nurse in a private hospital, where the present appellant was serving as brother. In her FIR itself, she has admitted that there were relations between accused and herself and then they started residing together in a rented premises with son aged 10. It will have to be therefore presumed that the sexual intercourse between them was with consent, however, now, since the relations have strained, she has come with a case that the accused was giving promise to marry her and under that pretext there was sexual intercourse between them and, thereafter the accused was avoiding marriage on the pretext that they should have child. She then states that on the condition put by accused, she has

undergone the reversal operation of removal of bilateral tubal block. The documents which have been collected during the course of the investigation does not reflect the name of the present appellant. The present appellant is aged 23 and she was already 30 years old. Therefore, it is hard to believe that there was any such relationship as contended by the informant. She might have lodged the report just to blackmail the appellant. The appellant has been falsely involved and this fact ought to have been considered by the learned Special Judge. The application under Section 439 of the Code of Criminal Procedure ought to have been allowed since the investigation is over and charge-sheet is filed.

4. Per contra, the learned APP as well as the learned Advocate appointed to represent the cause of respondent No.2/informant strongly opposed the appeal and supported the reasons given by the learned Special Judge. The documents on record would show that the informant had undergone the family planning operation, but the circumstances changed and her husband was convicted for committing murder of their son. Informant had no other option but to reside away from the matrimonial home along with the elder son. The appellant was serving in the same hospital where the informant was serving and it appears that they developed the love relations. It will have to be presumed that the appellant had the knowledge that

she is the member of Scheduled Caste. In specific words, she has stated that by giving promise to marry, the consent was obtained by the appellant for sexual intercourse and she has even undergone the operation of the reversal for removal of the bilateral tubal block. It shows that her intention was to maintain the relations, but after everything was done, the appellant then comes with the case that now she will not be accepted in the house as he is Maratha i.e. the upper caste and informant belongs to Scheduled Caste. It cannot be said that the appellant had no knowledge about the hurdle in the past and in spite of the knowledge that he will not be able to fulfill the promise to marry, still he had given the promises and kept the sexual relationship and, therefore, the alleged consent of the informant cannot be said to be free consent, but it is based on false promise to marry. There is ample evidence against the accused – appellant and, therefore, he does not deserve to be released on bail.

5. At the outset, it is to be noted that in the FIR itself respondent No.2 informant has given that she is a member of Scheduled Caste. She has stated that after she shifted to Majalgaon and started working in a private hospital as nurse, she came in contact with accused, who was serving as brother in the same hospital. She has also stated that they started residing in a rented premises along with the son of informant and between 09.08.2021 to 09.01.2023, they

were living in relationship. She has specifically stated that the accused was giving her promises to marry and under that pretext used to keep physical relations. At this stage, though the appellant is not supposed to disclose his defence, yet it can be seen that he is not saying that he had no knowledge about the caste of the informant. He is not accepting in his bail application that he was living in relationship with the informant, but still makes a statement that keeping sexual relationship with major lady under the promise of marriage is not the rape, which is a wrong statement if considered on the legal point. If the promise of marriage is false, in other words if the person giving such promise to marry knows that he cannot fulfill such promise but still gives it and then keeps the sexual relationship, then on the broader aspect, we would say that it will amount to rape. Of course this situation should prevail even after the adducing of the evidence also. Another fact to be noted in the present case is that upon the condition put by the appellant, she has undergone the operation. That means, she accepted the proposal then given by the accused that after another child is born to her from the accused, they would marry. During the course of investigation, the operation papers have been produced. That means, she had changed her stand or situation just to please the accused and now the accused is saying that she will not be accepted in the house, as she belongs to

Scheduled Caste. When the accused was knowing that she is a member of a particular caste and he is from the upper caste and the marriage is not possible as his family members will not prove the same and then he will not be able to perform the marriage, then *prima facie* it appears that the promise was false. It was given knowing it to be false and then if such sexual intercourse takes place, it cannot be said to be with free consent. It is for the trial Court to see whether the Explanation to Section 3(1)(w) of the Atrocities Act can be given a wide meaning. Though the Explanation is to explain expression “consent” used in sub-clause (i) of Section 3(1)(w) of the Atrocities Act, yet it is also the word used in Section 375 of Indian Penal Code. Provisos to Explanation to Section 3(1)(w) of the Atrocities Act read thus :-

“Provided that a woman belonging to Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of sexual nature is not by reason only that fact is to be recorded as consenting to the sexual activity.

Provided further that a woman’s sexual history, including with the offender shall not imply consent or mitigate the offence.”

6. Therefore, when there is evidence in the matter, this was not the fit case to grant bail. We do not find that the alleged difference of

age has played any significant role because even the appellant was knowing the age of the informant, the fact that she was already married and had child and, therefore, the learned Trial Judge was justified in not granting the discretionary relief to the appellant. The application under Section 439 of the Code of Criminal Procedure has been rightly rejected.

7. Taking into consideration the age of the accused, we expedite the trial. With these observations, following order is passed :-

ORDER

- i) The appeal stands rejected.
- ii) The proceeding arising out of Crime No.19 of 2023 before the learned Special Judge, under the Atrocities Act, Majalgaon, Dist. Beed is expedited. We direct the learned Special Judge to dispose of the case on its merits by the end of this year.
- iii) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm