

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CRIMINAL APPEAL NO.540 OF 2023

Rahul Motilal Rathod,
Age 30 yrs.,
R/o Hanumanwadi, Galan,
Tq. Pachora, Dist. Jalgaon.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra
Through Sub Divisional Police Officer,
Shrirampur Division, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.
- 2 X.Y.Z.

... Respondents

...

Mr. D.B. Thoke, Advocate for appellant

Mr. S.D. Ghayal, APP for respondent No.1

Mrs. Sunita G. Sonawane, Advocate for respondent No.2

...

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

DATE : 24th AUGUST, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Admit.

2 Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for the sake of brevity hereinafter referred to as “the Atrocities Act”) to challenge the rejection of the bail application under Section 439 of the Code of Criminal Procedure, 1973 i.e. application Exh.3 in Special Case No.27/2023 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Shrirampur on 09.06.2023. The present appellant has been arrested in connection with Crime No.292/2023 registered with Shrirampur City Police Station, Dist. Ahmednagar, for the offence punishable under Sections 363, 376, 376(2)(n), 323, 506 of the Indian Penal Code, 1860 and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v), 3(2)(va), 3(1)(r), 3(1)(s) of the Atrocities Act.

3 Heard learned Advocate Mr. D.B. Thoke for the appellant, learned APP Mr. S.D. Ghayal for respondent No.1 and learned Advocate Mrs. Sunita G. Sonawane for respondent No.2.

4 It has been vehemently submitted on behalf of the appellant that learned trial Judge has not considered the fact that the informant is a 26 years old lady serving as a Nurse and she says that she came in contact with the appellant through a social media. She accepts that she had accepted the

friend request from the present appellant and she was in contact with the appellant. The first alleged incident is stated to have taken place in January, 2023. They both had gone to a hotel in Mumbai as she was serving with Breach Candy Hospital, Mumbai at that time and she says that they had sexual intercourse there. Thereafter also she was taken to the hotel and they had sexual intercourse. Now, she is saying that, that act was against her wish, but the real fact appears to be a consensual relationship. Thereafter also she alleges that on 04.03.2023 she was abducted from Shrirampur Bus Stand and took her to Malegaon, Dist. Nashik. After staying for three days there, she was brought to Phulambri on 07.03.2023. She was then kept in a lodge there, where also they had sexual intercourse. This further reveals that the relationship was consensual. He relied on the decision in **Ansaar Mohammad vs. The State of Rajasthan and another** [2022 LiveLaw (SC) 599], wherein allegations of offence of committing repeated rape on the same woman was made, wherein it was revealed that the informant was willingly staying with the accused and had relationship, then, later on if the relationship is not working out, the same cannot be a ground for lodging First Information Report for the offence under Section 376(2)(n) of the Indian Penal Code.

the informant – prosecutrix strongly opposed the appeal. They supported the reasons given by the learned trial Judge while rejecting the bail application. They have also taken us through the contents of the First Information Report, in which also it has been clearly stated that till 21.03.2023 the accused had not disclosed to the informant that he is already married and has daughter aged 6. She has then lodged the First Information Report on 23.03.2023. If the consent is obtained by misrepresentation or by suppressing the fact that the accused is already married, then it would amount to rape. The prosecutrix became pregnant from the appellant. Now, the medical evidence would support her contention. The chats on the social media would also support. Now, the investigation is over and more evidence has come in the form of statement of other two girls who have been defrauded by the appellant. He has told those girls a different occupation and had given them promise to marry. Those girls were introduced by the accused as his wife during different period and they were staying together and, therefore, the learned Special Judge has observed that the accused is in habit of attracting the girls in his love trap and spend good times with them to satisfy his physical lust by giving promise to marry. This *modus operandi* of the accused has been taken as harmful and menace to the society and, therefore, the discretion has been properly used.

6 At the outset, it is to be noted that the contents of the First Information Report would show that the prosecutrix is major girl and was serving in one of the reputed hospitals in Mumbai. She says that she got acquaintance with the appellant about five months prior to the First Information Report through a social media. The appellant had given her friend request, which she had accepted and thereafter they had exchanged their mobile numbers. Thereafter, they were chatting on social media as well as talking on mobile as friend. But, then in January, 2023 he went to meet her at Mumbai, took her to a hotel, where they had no sexual intercourse. Thereafter, on the next two days he had come to meet her in the hospital and had talks. It appears that he adopted the technique of getting sympathy from the prosecutrix and again he took her to a hotel. She says that at that point of time in spite of her resistance he had forcible sexual intercourse with her. He thereafter persuaded her not to disclose the said fact to anybody. Even if we take that consensual intercourse was with consent or though it was not with consent, she had not lodged any report immediately; yet, thereafter she says that he had taken her to Pune and had sexual intercourse in the room, which he has taken on rent. When she came to know thereafter that she is pregnant, she told him that they should marry, at that time, he told that there is no permission from his family members. She had gone to her native place and then along with her mother when she was at the Bus Stand of

Shrirampur, her mother went to the washroom, at that time, the accused met her there and she states that she was taken forcibly by the accused to Malegaon, Dist. Nashik. After staying with her, they went to Phulambri, where they were staying in a lodge. They had sexual intercourse, which she states that it was against her wish. But then she says that on 21.03.2023 accused disclosed her that he is already married and has daughter of six years of age. She then asked him, as to why he has done the said act with her, then, he gave her threat to kill. She was traced by police on 22.03.2023, which was as a result of the missing report lodged by her brother with Shrirampur Police Station, then, she has lodged the First Information Report.

7 Perusal of the First Information Report would definitely show that the accused had not disclosed about his status as 'married' prior to 21.03.2023. There are statements of the witnesses stating that the accused had disclosed the status of prosecutrix as his wife to those witnesses.

8 Another fact to be noted is, the statements of the two other ladies, who appeared to be aged 23 and 30 and they have given as to how they have been cheated by the accused. To both of them he had disclosed that he has joined the Police Department, when they had met him at Nagpur, but then thereafter he told that he has got a job at Pune. It appears that both

those ladies came to Pune during different period. They were dragged by the accused in the trap by saying that he loves them and then he had sexual intercourse with them also. In respect of one of them, he had taken room on rent with her by disclosing that they are husband and wife to the landlord. We say that the learned trial Judge has rightly observed that there is evidence to note that the accused is playing with the lives of the girls/ladies to satisfy his physical lust and, therefore, he is a menace or harmful to the society if released on bail. As the discretion is rightly used, though now the investigation is over and charge sheet is filed, we do not find this to be a fit case where the appellant should be released on bail. The appeal, therefore, stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)