

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 895 OF 2023

Nitin Sukadeo Chavan

...Appellant

Versus

The State of Maharashtra & Others

...Respondents

Mr. S.S. Bora, Advocate for the Appellant.

Mr. V.S. Badakh, APP, for the Respondent – State.

Mr. J.S. Jain, Advocate appointed for the Respondent No. 4

...
CORAM: R.M. JOSHI, J
DATE : 3rd NOVEMBER, 2023

PER COURT :

1. Appellant apprehends arrest in connection with with C.R. No. 230/2023 registered with Taloda Police Station, Dist. Nandurbar for the offences punishable under Sections 376(N), 420, 494, 504, 294 read with 34 of the Indian Penal Code and under sections 3(1)(r)(s) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. First Informant claims that she has acquaintance with the appellant who was posted as Police Inspector at Taloda Police Station. It is her contention that in March-2019, she got acquainted with the appellant as the appellant was investigating the crime in connection with the murder of her uncle Amarsingh. She claimed that said acquaintance later on turned into love relations. She questioned the appellant as to how he maintains love relations with her when he is already married. She claimed that appellant told her that since her wife

is not begetting the child, he is going to divorce her and thereafter they would marry. By relying on the said assurance she continued the relationship with him. After transfer of appellant from Taloda police station to Nandurbar, a room was taken by him on rent and at that place he used to establish forcible physical relations with her. It is also claimed that she became pregnant out of said relationship and then appellant pressurized her for abortion. She did not concede to the said pressure for miscarriage and on 07.07.2022, she gave birth to a girl child. It is alleged that thereafter she heard about appellant getting married with another lady. Thereafter, appellant had started ignoring her. She also claimed that he had threatened her and abused her over her caste. Hence, she lodged the report.

3. Learned counsel for the appellant submits that there is absolutely consensual physical relationship in between appellant and victim and as such offence punishable under section 376 is not made out. Similarly, offence under section 494 does not get attracted. It is submitted that merely because the appellant is a police officer it cannot be presumed that he has exerted pressure on the police machinery for the purpose of not recording complaint of the informant in time as sought to be alleged by the informant, unless it is so shown with concrete material. To support his submissions he relied on *Ansaar Mohammad vs. The State of Rajasthan & Anr.*, 2022 LiveLaw (SC) 599, *Raj Anil Pawar vs. State of Maharashtra & Anr.* (ABA No. 1733/2022)

and Suraj Sadashiv Naitam vs. State of Maharashtra, (ABA No. 398/2022).

4. Learned counsel appointed for informant opposed the appeal contending that this is a clear-cut case of establishing physical relations on the basis of false promise of marriage. He also claims that the supplementary statement clearly indicates involvement of the appellant in the crime, not only for the offences under IPC which are serious in nature but offence is committed also under the provisions of Atrocities Act.

5. Learned APP opposed the appeal by referring to the statement of informant and witnesses coupled with the medical papers of delivery of child by her. It is submitted that at the instance of the appellant name of mother of informant was shown to be the patient at the time of delivery in the hospital and hence it is a fit case for rejecting the anticipatory bail.

6. Perusal of FIR and supplementary statement of victim clearly show victim is major and that she was in love relationship with appellant. Though, appellant is police personnel there is no allegation that by abusing his position said relationship was established. From FIR no offence under Atrocities Act can be said to be made out. The contention of learned counsel for the informant that police did not record report as per her say cannot be accepted at this stage, for the

reason that informant on her own had lodged complaints to Mahila Dakshata Committee. Complaint of the victim to Women Committee also does not refer the statement made in the supplementary statement. Record further indicies that informant since beginning had knowledge about the subsisting marriage of appellant with another lady. Thus it is also not case of suppression of facts. This Court therefore finds reason to prima facie accept the contention of learned counsel for appellant that since the relationship is not worked out subsequently, report came to be lodged by informant and that this could be a case of consensual physical relationship.

7. Having regard to these facts, liberty of the Appellant deserves to be protected. Hence, the order:

O R D E R

- (i) In the event of arrest of the Appellant in connection with with C.R. No. 230/2023 registered with Taloda Police Station, Dist. Nandurbar for the offences punishable under Sections 376(N), 420, 494, 504, 294 read with 34 of the Indian Penal Code and under sections 3(1)(r)(s) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he shall be released on bail on furnishing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount.
- (ii) He shall attend the concerned police station as and when required.
- (iii) He shall not enter the village where the informant/victim is residing and contact the victim and the witnesses directly or indirectly till the conclusion of trial.

- (iv) He shall not interfere with the evidence in any manner whatsoever.
- (v) He is further directed to cooperate the investigating agency for further investigation.
- (vi) Fees of Mr. J.S. Jain, learned Counsel appointed for Respondent No. 4, is quantified @ Rs. 6000/- (Rupees Six Thousand Only) to be paid by High Court Legal Services Sub- Committee, Aurangabad.

[R.M. JOSHI, J.]