



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

CRIMINAL APPEAL NO. 900 OF 2023

Sominath Dnyaneshwar Ghuge

VERSUS

The State Of Maharashtra And Another

Mr. S. J. Salunke, Advocate for the appellant

Mr. S. B. Narwade, APP for the respondent/State

Mr. S. S. Varma, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 13th DECEMBER, 2023

P.C. :-

1. Against the order of refusal of anticipatory bail by the Special Court present appeal is filed under Section 14-A of Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act') in connection with Crime No. 178/2023 registered with Harsul Police Station, Dist. Aurangabad for the offences punishable under Sections 376(2)(n), 504, 506 r/w 34 of Indian Penal Code (for short 'IPC') and under Sections 3(1)(r), 3(1)(s) of the Atrocities Act.

2. First informant is a girl aged 19 years. She claims that she was employed with one private company and got acquainted with the appellant/accused. It is her contention that accused used to try to talk to her and used to convey his liking towards her though she never

responded to it. It is also stated in the first information report that in the month of April he expressed his love towards her and proposed for marriage. He invited her his birthday for lunch. Though she was not inclined go with him he threatened her to commit suicide. Hence, she went along with him. It is alleged that against her will sexual relationship was established by him, and said relationship was forcible. Thereafter since accused agreed to marry her there developed love relations between them. On 19th June, 2023 she disclosed her caste to the accused and thereafter accused told her that he will talk to his parents about it. Thereafter accused bought a mobile phone for her and they used to talk with each other. It is alleged that while talking on phone accused told her he could not marry her owing to her caste. Allegation is also made against co-accused that he threatened her after abusing her over the caste and that threats were issued to publish her obscene photographs.

3. Learned counsel for the appellant submits that the informant is major and it is clearly case of love affair and consensual physical relations thereafter. It is submitted that the first information report also clearly indicates that the informant was with the accused in the room in the hotel for 2-3 hours and that there were physical relations between them. According to him even after the informant disclosed her caste to

the accused he did not refuse to marry her on the contrary thereafter a phone was bought by him for the informant and they continued their relationship. It is submitted that merely because the marriage could not be performed it cannot be said that the offence of rape has been committed. It is also contended that the offence under the Atrocities Act is also not made out. To support his submissions he placed reliance on the judgment of Hon'ble Apex Court in the case of ***Dr. Dhruvaram Murlidhar Sonar V. State of Maharashtra and Ors, AIR 2019 Supreme Court 327.***

4. Learned counsel for the informant opposed the appeal by contending that the first information report as well as the history given to the Medical Officer is clear to the effect that it was not consensual physical relationship between informant and the appellant and that firstly by applying force and thereafter on false promise of marriage they established the said relationship. It is submitted that the statements in the first information are sufficient to attract the provisions of the Atrocities Act. According to him the bar of Section 18 of the Atrocities Act gets attracted to the present case and hence it is not a fit case for granting pre arrest bail to the appellant.

5. Learned APP also opposed the appeal by contending that the

statement of informant as well as witnesses coupled with medical evidence clearly show that it is a case of rape. According to him since the offence is committed against the member of scheduled caste community the offence under Section 3(2)(v) gets attracted.

6. There is no dispute about the fact that the informant is major and was capable of consenting for physical relationship. Perusal of the first information report shows that the appellant had proposed her for the marriage. Though informant claims that she went along with the appellant on his birthday to hotel not willingly however has per own statement they were in the hotel for 2-3 hours. Though she alleges that a forcible relations was established by the appellant, no complaint was made by her even to her parents in this regard. On the other hand the first information report shows that there were love relations between them. As rightly pointed out by the learned counsel for the appellant that even in the first information report it is stated that knowing the caste of the informant appellant never refused to marry her on the contrary thereafter he bought one mobile phone to her and even then their relationship was continued. Thus, there is prima facie substance in the contention that this is not the case wherein the appellant has established physical relationship forcibly or on false promise of marriage or refused to marry her on account of her caste. Merely because the promise of

marriage could not be materialized subsequently for whatever reason it cannot be presumed that it is a case of rape.

7. Though it is alleged that she was threatened to make viral of obscene photographs, however, there is no allegation that it was basis for establishing physical relations. *Prima facie* offences under the Atrocities Act do not get attracted and hence the bar under Section 18 of the Atrocities Act is not applicable to the present case. Appellant has no criminal history behind him. Having regard to the facts and circumstances at the case the learned Special Court has committed error in refusing to grant pre arrest bail to the appellant. Hence, appeal deserves to be allowed. Appeal stands allowed in terms of interim order dated 12th October, 2023.

(R. M. JOSHI, J.)

ssp