

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 978 OF 2022

Sameer Haribhau Sankpal

...Appellant

Versus

1. The State of Maharashtra

2. Pooja Anil Modak

...Respondents

....

Ms. Dhruiti Kapadia a/w Mr. Kunal Tiwari i/by K. Juris Law Firm for Appellant.

Mr. Sanjeev P. Kadam a/w Mr. Mayur Govind Sanap i/by Mr. Prashant Raul, Advocate for Respondent No.2.

Mrs. S. D. Shinde, APP for the Respondent – State.

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**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, J.**

DATE : 31st JANUARY 2023

PC :

1. This is an Appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. (for short “SC/ST Act”). Appellant has challenged Order dated 26th August 2022 passed by learned Additional Sessions Judge, Satara rejecting application for anticipatory bail preferred by Appellant.

2. Appellant is apprehending arrest in C.R. No. 60 of 2022 registered with Panchgani Police Station for the offences punishable under Section 376(2)(n) of IPC and Sections 3(1)(w)(i), 3(1)(w)(ii)

and 3(2)(va) of the SC/ST Act. The FIR was registered on 15th July 2022. The complainant is aged about 28 years. It is alleged that, in January 2017, she got acquainted with Appellant/accused on Facebook. They exchanged messages through cellphone. They became friends. The accused called her at Panchgani. She went to Panchgani. She was taken to a hotel at Mahabaleshwar. The accused had booked room in the hotel. The accused told her that, he is in love with her. The complainant told him about her caste and also told him they can be good friends. The accused had physical relationship with the complainant without her consent. They stayed in the hotel for three days. The accused told complainant that, he would marry her. Accused gave promise of marriage and maintained physical relationship with her. In 2017, the accused demanded an amount of Rs.3,00,000/- from the complainant. She transferred the said amount through RTGS. The accused took the complainant to his house at Satara. She was introduced to his brother and sister-in-law. They were informed about their love affair. The brother and sister-in-law of the accused had consented for their marriage. The complainant stayed with them for three days. During the stay, the accused had indulged in physical relationship with the complainant. In 2018, the complainant stayed with accused in hotel at Goa. Under the promise of marriage, the accused again maintained physical

relationship with complainant. The accused kept on demanding money. The accused called the complainant at his house when the other family members were not in the house and had physical relationship with her. In February 2019, the complainant was ailing. She consulted Gynecologist. She was advised to undergo biopsy. The complainant was diagnosed with Cervical Cervix Cancer. The accused kept on maintaining physical relationship with her. She was advised to undergo surgery relating to uterus and accordingly surgery was performed. The accused started to avoid her and did not respond to her phone calls. The complainant then learnt that the accused would perform marriage with another woman on 24th April 2022 and that he had performed engagement ceremony in November 2021. The complainant questioned him about it. Appellant told her that she belongs to Mahar community and therefore it is not possible to perform marriage with her. The accused performed marriage with another woman. Hence, the complainant lodged the complaint with Police.

3. Learned Advocate for the Appellant submitted that the relationship between Appellant and informant was of consensual nature. There is passing remark or cursory reference to the caste of informant in the FIR. No other overt act to attract provisions of the SC/ST Act is attributed to the Appellant. The Appellant and

Respondent No.2 were having love affair since 2017. The FIR was lodged after the relationship got soured. FIR itself indicate that the physical relationship between complainant and the accused was of consensual nature. That, the custodial interrogation of the applicant is not necessary.

4. Learned advocate for the Appellant has relied upon the decision of the Supreme Court in the case of *Naim Ahamed Vs. State (NCT of Delhi)* delivered in Criminal Appeal No. 257 of 2023 dated 30.01.2023, wherein it was observed that, there is difference between giving false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. It would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376.

5. Learned APP submitted that the accused had maintained physical relationship with the victim under the guise of promise to marry which he did not perform and thereby committed offence under Section 376 of IPC. The victim belongs to Mahar caste, hence offences under SC/ST Act are attracted. The Appellant is not entitled for anticipatory bail.

6. Learned Advocate for Respondent No.2/complainant submitted that the caste of the victim was known to the accused. Physical relationship was maintained with the victim under the false promise of marriage. Consent was obtained under the pretext of marriage. The victim was introduced to family by the accused to impress upon the victim that accused would perform marriage with her. Consent was obtained under misrepresentation. The accused performed marriage with another woman. The offence under Section 376 of IPC is made out. The decision relied upon by the learned advocate for the Appellant is not applicable to the fact of this case.

7. From the contents of the FIR it *prima facie* appears that the victim and the accused were having love affair. They got acquainted with each other in 2017. They stayed together at various places. There was consensual physical relationship between them. The accused had performed marriage subsequently. From the tenor

of the FIR it is apparent that, the relationship between them was of consensual nature. Considering the allegations in the FIR, the bar under Section 18 of the Atrocities Act would not deprive the Appellant from grant of pre-arrest bail. Custodial interrogation of the Appellant is not necessary. Interim protection granted to the Appellant by this Court vide order dated 4th October 2022 is required to be confirmed.

ORDER

- (i) Interim relief granted by Order dated 4th October 2022 is hereby confirmed.
- (ii) Impugned Order dated 26th August 2022 passed below Exhibit-1 by additional Sessions Judge, Satara in Criminal Bail Application No.527 of 2022 is set aside.
- (iii) Appeal is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A. S. GADKARI, J.)