

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 96/2023.

Shaikh Asmat Abdul Razzak,
Age 34 years, Occupation – Labour,
resident of Asadpur, Tq. Achalpur,
District Amravati.

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APPELLANT.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Paratwada Police Station,
Tahsil Achalpur, District Amravati.

2.XYZ, Crime No.165/2023,
through Police Station Officer,
Paratwada Police Station,
Tahsil Achalpur, District Amravati.

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RESPONDENTS.

Mr. D.S. Shrimali, Advocate for the Appellant.
Ms. M. Deshmukh, A.P.P. for Respondent No.1/State.
Ms. F. Badani, Advocate (appointed) for Respondent No.2.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.

DATE : MARCH 02, 2023.

ORAL JUDGMENT (PER , VINAY JOSHI, J.) :

Considering the controversy involved in the Appeal, and with consent of the learned Counsel appearing for the respective parties, Criminal Appeal is taken up for final disposal at the stage of admission.

Admit.

2. This is an appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “**the Atrocities Act**” for short), seeking to quash the order rejecting pre-arrest bail passed by the Additional Sessions Judge-2, Achalpur, District Amravati on 06.02.2023 in Criminal Bail Application No.50/2023.

3. Crime No.165/2023 came to be registered by Paratwada Police Station on the basis of first information report lodged by respondent no.2 for the offence punishable under Sections 376[2][n], 506 of the Indian Penal Code and Sections 3[1][w], 3[1][w][i], 3[1][w][ii] of the Atrocities Act. The above crime was registered at

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the instance of respondent no.2, a grownup married lady [victim], aged 33 years. It is her case that she got married long back with one person, however, due to differences she is separated. Informant has a son from her husband, and as such both are residing separately from last 9 years.

4. The informant stated that since last 5 years she has love affair with the appellant and both were residing as husband and wife. It is her contention that the appellant promised to marry her and under said pretext had established sexual relations. It is her contention that both lived together for a considerable period, however, later on she learnt that the appellant is a married person and therefore the report.

5. It is the contention of the appellant that it is purely a case of consensual relationship. The contents of first information report does not make out a case that only because there was promise to marry, the victim gave her consent for sexual relations.

6. Perusal of the report itself indicates that the informant

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lady was separately staying from her husband from past 9 years. During subsistence of marriage, she had maintained relations with the appellant which itself prima facie falsifies her contention that she gave her consent on the premise of promise to marry. It is apparent that the relationship was going on in between two grownup adults for years together. Having regard to the above facts, there is no necessity for custodial interrogation of the appellant. In view of above, the appellant has made out a case for grant of pre-arrest protection, following order is passed.

ORDER

- [a] Criminal Appeal is allowed and disposed of.
- [b] The impugned order passed by the Additional Sessions Judge-2, Achalpur, District Amravati on 06.02.2023 Below Exh.1 in Criminal Bail Application No.50/2023, is hereby quashed and set aside.
- [c] In the event of arrest of the appellant - Shaikh Asmat Abdul Razzak in connection with Crime No.165/2023 registered with Paratwada Police Station for the offence punishable under Sections 376[2][n], 506 of the Indian

Penal Code and Sections 3[1][w], 3[1][w][i], 3[1][w][ii] of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, he be released on anticipatory bail on his furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.

- [d] The appellant/accused shall attend concerned Police Station on every Monday in between 10.00 a.m. to 12.00 noon till filing of the charge-sheet or for a period of 90 days, which ever is earlier.
- [e] The appellant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- [f] The appellant/accused shall make himself available for investigation by Police as and when required.

7. Fees of the appointed Counsel for respondent no.2 be paid as per Rules.

JUDGE

JUDGE