



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 173 OF 2024

Prashant Santosh Burhade

...Appellant

VERSUS

1. The State of Maharashtra
2. The Superintendent of Police, Ahmednagar
3. XYZ

...Respondents

WITH
CRIMINAL APPLICATION NO. 1481 OF 2024
IN
CRIMINAL APPEAL NO. 173 OF 2024

Mr. R.S. Deshmukh, Senior Advocate i/by. Mr. Devang
Deshmukh, Advocate for appellant
Mr. Rahul Tambe, Advocate for respondent No. 3
Mr. C.V. Bhadane, APP for respondents No. 1 and 2

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 3rd MAY, 2024
PRONOUNCED ON: 11th JUNE, 2024

ORDER :

1. This appeal filed under section 14(A) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is directed against order dated 19.01.2024 passed by learned Additional Sessions Judge, Ahmednagar in Bail Petition No. 57 of 2024.

2. Prosecutrix/3rd respondent lodged FIR on 29.12.2023 in short alleging that appellant/accused got acquainted with her

Bhagyawant Punde

on account of transaction of online payment to her friend in December-2022, payment was made in the month of January-2023. Thereafter, appellant started contacting her on phone and started forwarding messages to her. He then called her at Thapar cafe, Ahmednagar. In the meeting, he expressed his desire to start love relations with her, but she refused it. Thereafter, they used to talk and chat on cellphone. In the month of May, appellant called prosecutrix and took her in his four wheeler at one house in Bhistbaug area and committed forcible sexual intercourse on her. Thereafter intimacy developed between both of them and their physical relations continued. On 17.06.2023, prosecutrix underwent sonography test, in which it was revealed that she was pregnant. At the instance of appellant, she got abortion done at Kachare hospital, Ahmednagar, in the presence of co-accused Rajveer and Banty. After the abortion, appellant started avoiding her. On 11.12.2023 appellant and co-accused Vishal met prosecutrix and Vishal angrily asked her to stop relations with appellant permanently and told her to accept compensation from appellant. Appellant flatly denied the marriage proposal. Hence, she lodged present FIR, which is registered at C.R. No. 1803 of 2023, with Tofkhana Police Station, Dist. Ahmednagar, under sections 376(2)(n), 313, 506

r/w 34 of Indian Penal Code and under section 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Heard learned Senior Advocate for appellant, learned APP for State and learned advocate for respondent No. 3. Perused the investigation papers.

4. Learned Senior Advocate would urge that prior to the lodging of present FIR, appellant had lodged FIR on 19.12.2023 against prosecutrix, which is registered at C.R. No. 1536/2023 alleging extortion and to give counter blast to the same, appellant is falsely implicated in the present crime. He submits that relations between prosecutrix and appellant were consensual and only with a view to extort money from appellant at the instance of appellant's father-in-law, prosecutrix with *malafide* intention has falsely implicated appellant in the present crime. It is further submitted that offences under Atrocity Act are not attracted in the present case, as there is no material to show that appellant has committed offence only because prosecutrix belongs to a Scheduled Caste, hence, bar under Section 18 would not be attracted. Appellant is on interim bail and he has co-operated in the investigation. Charge sheet is filed on

26.02.2024 and therefore, further custodial detention of appellant is not necessary. He therefore urged that this is a fit case to grant anticipatory bail to appellant.

5. Learned APP on the other hand vehemently opposed the appeal by relying on papers of investigation. He submits that in spite of knowing the fact that prosecutrix belongs to a Scheduled Caste, appellant has given her false promise of marriage and established physical relations with her and thereafter retracted his promise of marriage. Therefore, there is sufficient material on record to attract provisions of Atrocity Act and Section 376 of IPC and hence bar under section 18 of Atrocity Act would be attracted to the present case. He therefore submits that considering the serious allegations and the fact that appellant has not properly co-operated during the investigation he is not entitled for anticipatory bail.

6. Learned advocate for prosecutrix strenuously opposed the appeal. He submits that appellant has deceived the prosecutrix by giving false promise of marriage and forcibly established physical relations with her against her will knowing that prosecutrix belongs to a Scheduled Caste. Appellant has got her pregnancy terminated. Therefore, there is sufficient material

on record to attract provisions of Atrocity Act and hence bar under Section 18 of Atrocity Act would be attracted to the present case. He submits that appellant is facing prosecution in Crime No. 1125/2021, under sections 304(B), 323, 504, 506 r/w 34 of IPC, wherein appellant was granted bail on a condition that, he shall not indulge in any crime. Appellant has breached the said condition by indulging in the present crime. He therefore submits that appellant does not deserve discretionary relief of anticipatory bail. In support of his submission he relied on *Sumitha Pradeep vs. Arun Kumar and Another*, 2022 0 AIR (SC) 5705.

7. Perusal of FIR in question and charge sheet, *prima facie*, indicate that physical relations between prosecutrix and appellant were consensual. Prosecutrix is a married lady aged 25 years having two daughters. It is therefore difficult to believe that in spite of first forcible sexual intercourse she continued the physical relations with appellant without any protest. Allegation of prosecutrix that appellant promised to marry her also, *prima facie*, appears to be improbable. It is difficult to believe that prosecutrix was not aware that appellant is married person.

8. On 19.12.2023, appellant has lodged FIR at C.R. No. 1536/2023 with Kotwali Police Station, Ahmednagar against prosecutrix and three others alleging that prosecutrix forced friendship on appellant and thereafter she started extorting money from him saying that she will make WhatsApp chats between appellant and herself viral and defame appellant. Thereafter on 10.12.2023, prosecutrix allegedly asked appellant to deposit Rs. 5 Lakhs each in the name of her two daughters and asked him to marry her, otherwise she will implicate him in various other crimes. After lodging of FIR by appellant a news was published in the newspaper that appellant is demanding extortion.

Prosecutrix has lodged FIR in question on 29.12.2023 against appellant subsequent to the filing of FIR by appellant.

9. Prima facie, there is substance in the contention of appellant that since appellant lodged FIR against prosecutrix on 19.12.2023 with a view to give counter blast to the same, he is falsely implicated in the present crime.

10. Statement of doctor who performed medical termination of pregnancy on prosecutrix reveals that as per sonography report prosecutrix had suffered natural abortion and

part of flesh was remaining in her uterus, which was removed by him by doing curetine. This also creates doubt about version of prosecutrix that appellant forced her to undergo abortion.

11. There is no material on record to show that only because prosecutrix belongs to Scheduled Caste, appellant has committed the present crime. Therefore, this Court is of the view that provisions of Atrocity Act are not attracted to the facts of the present case and hence bar under Section 18 of Atrocity Act would not be attracted.

12. It is true that Crime No. 1125/2021 was registered against appellant by his father-in-law, for offences punishable under sections 304-B, 323, 504, 506 r/w 34 of IPC. While releasing appellant on regular bail by order dated 24.03.2022, Trial Court imposed a condition that appellant shall not indulge in any offence while on bail.

It is necessary to mention here that in the said FIR father-in-law of appellant has made a specific allegation that, his daughter Rohini (wife of appellant) had informed him that appellant had illicit relations outside and he was receiving calls and messages from ladies on his cell phone. When she asked appellant about the same, he assaulted her.

It is also contention of appellant that at the instance of his father-in-law and with a view to extort money, FIR in question is lodged against him by the prosecutrix. This appears to be probable. Apart from this, father-in-law of appellant has remedy to approach Trial Court seeking cancellation of bail on the alleged ground of violation of condition. Taking into consideration the peculiar facts of the present case, it cannot be said that on this ground bail should be refused to appellant when otherwise he is entitled for bail.

13. Appellant was granted interim protection and he has attended the police station and has co-operated in the investigation. Charge sheet is already filed, hence, pre-trial custodial detention of appellant in the facts of the present case is not necessary. In the result following order:

ORDER

- i) Criminal Appeal is allowed.
- ii) Impugned order dated 19.01.2024 passed by learned Additional Sessions Judge, Ahmednagar in Bail Petition No. 57 of 2024 is hereby quashed and set aside.
- iii) Interim protection granted to appellant by order dated 21st February, 2024 is hereby confirmed.

- iv) Appellant shall surrender his cell phone with the investigating officer, if not already surrendered.
- v) Appellant shall not in any manner influence and/or tamper the prosecution witnesses/evidence.

14. In view of disposal of Criminal Appeal No. 173 of 2024, Criminal Application No. 1481 of 2024 is disposed of.

[NITIN B. SURYAWANSHI, J.]