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

922 CRIMINAL APPEAL NO. 370 OF 2024

Mahesh Changdev Parandkar

VERSUS

The State Of Maharashtra And Another

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Mr Gaurav L. Deshpande, Advocate for Appellant

Mrs M. L. Sangit, A.P.P. for Respondent No.1/State

Mr K. R. Yadav, Advocate (appointed) for Respondent No.2

CORAM : R. M. JOSHI, J.

DATE : 17th October, 2024

PER COURT :-

1. This appeal is filed against order of rejection of anticipatory bail by the Special Court in Crime No.176 of 2024, registered with M.I.D.C. Police Station, Latur, Dist. Latur, for the offences punishable under Sections 376, 376 (2)(n), 507 read with Section 34 of the India Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act).

2. The first informant is a lady aged about 43 years old. She claims that, she got acquainted with appellant on facebook. Their friendship ultimately led to love relation. It is alleged that,

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on false promise of marriage by appellant, they had physical relationship. She further contends that, till 2024, they had in relationship. However, thereafter, appellant started to avoid her. It is claimed in the first information report that on 03/03/2024, from maternal uncle of the appellant, she came to know that appellant is married. It is, therefore, alleged that, on false promise of marriage, appellant has made physical relationship with her, which amounts to crime of rape.

3. Learned counsel for appellant has pointed out from the first information and chats between appellant and informant, which according to him, clearly indicate that it is the case of love affairs. It is his submission that, both appellant and informant are major, and as such, if any physical relationship is established between them, that could be consensual. He also drew attention of the Court to chats of November 2023, which indicate that informant has knowledge about appellant having been married.

4. Learned APP, as well as learned counsel for informant opposed the appeal by referring to the first information report, as well as statement of informant recorded during the course of

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investigation. Learned counsel for informant submits that, consent obtained by appellant from the informant for sexual relationship, is on misconception of fact. Thus, it is his submission that, it is not consent defined under Section 90 of the Indian Penal Code. To support his submission, he places reliance in case of **Anurag Soni Vs. State of Chhattisgarh, [AIR 2019 Supreme Court 1857]**. He also contended that, as this offence is committed against member of scheduled caste community, an offence under Section 3(1)(w) of the Atrocities Act gets attracted to the present case. He opposed the appeal by inviting attention of this Court to the bar created by Section 18 of the Atrocities Act for granting anticipatory bail.

5. No doubt, where *prima facie* offence made out under the Atrocities Act, the embargo created under Section 18 of the said Act would apply and not otherwise. Insofar as, first information report is concerned, it clearly shows that informant and present appellant are major. There is no allegation that, any forcible physical relationship has been established by the appellant with informant. There is reason to accept contention of

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learned counsel for appellant that there was consensual relationship between two adults. As far as allegation of false promise of marriage is concerned, the documents placed on record i.e chats between appellant and informant shows that in November 2023, the informant had knowledge about fact about appellant is a married person. In spite of said fact, report has been lodged on 12/03/2024. There is no explanation given from informant for such time being taken for lodging first informant report. There is no further material to accept that informant did not have knowledge of the fact of appellant being married person, till lodging of the report to the police.

6. Since on the face of it, this appears to love relationship between two adult persons, this Court finds it difficult to accept contention of learned counsel for informant that offence under Section 3(1)(w) of the Atrocities Act gets attracted. Appellant has no criminal history.

7. Having regard to the aforesaid facts, this Court finds that this is a fit case for grant of anticipatory bail. Hence, this appeal is allowed with the following directions :-

ORDER

- (i) Appeal is allowed.
- (ii) Appellant be released on bail in connection with Crime No. 176 of 2024, registered with M.I.D.C. Police Station, Latur, Dist. Latur, for the offences punishable under Sections 376, 376 (2)(n), 507 read with Section 34 of the India Penal Code and under Sections 3(1)(r), 3(1)(s), 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) with one surety in the like amount.
- (iii) He shall attend the concerned police station once in a week.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.
- (vi) He is further directed to cooperate the investigating agency for further investigation.

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(v) Fees of learned appointed counsel is quantified at Rs.10,000/-

(vi) Learned AGP to communicate this order to the concerned Investigating Officer.

(R. M. JOSHI)
Judge

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