



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1103 OF 2023

Keshav s/o. Dnyanoba Dhakne .. Appellant
Age. 57 years, Occ. Service as a Senior Clerk,
At Additional District and Sessions Court, Nilanga,
R/o. Aswalamba Parali,
Tq. Parali (V), Dist. Beed,
At present R/o. AUSA Road, Latur.

Versus

1. The State of Maharashtra .. Respondents
Through Police Inspector,
Police Station Udgir (Rural),
Dist. Latur.
2. X.Y.Z.

Mr.S.S. Thombre, Advocate for the appellant.
Mr.N.B. Patil, APP for the respondent/State.
Mr.Ashutosh Kulkarni, Advocate (appointed) through Legal Aid.

CORAM : NITIN B.SURYAWANSHI,J.
DATED : 08.01.2024

PC :-

01. The appellant apprehends arrest in connection with Crime No. 612 of 2023, registered with Police Station, Udgir (Rural) for the offence punishable under sections 376, 376(2)(n) of the Indian Penal Code and

section 3(2)(va), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

02. The FIR is lodged by the prosecutrix alleging that due to death of her husband, she filed a civil matter in Udgir Court in 2021. At that time the appellant was working in the Court. Therefore, she became acquainted with him. The acquaintance turned into friendship and the appellant informed the prosecutrix that his relations with his wife are not good and he is not residing with her since last 10 years. Thereafter, the friendship turned into an affair. The prosecutrix claims that the appellant promised to marry her and look after her children. Then he hired a room at Bidar Road, Udgir on rent, where she used to accompany him for one month and they had physical relations, which continued thereafter. On 18.09.2023 the appellant telephoned the prosecutrix from the Court and informed her that he is suffering from giddiness and asked her to reach there. The prosecutrix went to Nilanga and took the appellant to the Government Hospital, where the Doctor opined that the appellant had suffered a heart attack and advised to carry him to the Civil Hospital, Latur. Thereafter, family members of the appellant came to the hospital and took him to the Civil Hospital, Latur. Thereafter, appellant stopped receiving phone

calls of the prosecutrix and has severed relations with her. The prosecutrix, therefore, alleged that inspite of knowing that she belongs to a scheduled caste, the appellant on the false promise of marriage, kept physical relations with her and therefore the appellant has committed rape on her.

03. Heard learned Advocate for the appellant, learned APP for the respondent/State and learned Advocate for respondent No.2. Perused the investigation papers.

04. The prosecutrix is a lady aged 40 years; whereas the appellant is a man of 57 years. Prima facie, it appears that physical relations between the prosecutrix and the appellant were consensual. It is only after the appellant stopped receiving calls from the prosecutrix and severed the relations with her, the prosecutrix has lodged the FIR in question.

05. Prima facie, provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are not attracted in the present crime. The appellant is a Government servant and is not likely to flee from the justice. Appellant's custodial interrogation is not warranted in the peculiar

facts of the case.

06. In the result, the following order :-

ORDER

- (a) The appeal is allowed.
- (b) Impugned judgment and order passed by the Additional Sessions Judge, Udgir, Dist. Latur vide order dated 03.11.2023 below Exh.1 in Criminal Misc. Application (Bail) No. 226 of 2023 is quashed and set aside.
- (c) In the event of arrest of the appellant in connection with Crime No. 612 of 2023 registered with Udgir Rural Police Station, Dist. Latur for the offence punishable under sections 376, 376(2)(n) of the Indian Penal Code and under sections 3(2)(va), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant be released on executing PB and SB of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.
- (d) The appellant shall attend the concerned police station as and when called by the Investigating Officer and shall co-operate in the investigation.

(e) The appellant shall not tamper prosecution evidence.

[NITIN B.SURYAWANSHI,J.]