

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 683 OF 2024

Ambadas Basavraj Kusma

... **Appellant**

Versus

The State of Maharashtra And Anr.

... **Respondents**

Mr. Ritesh Thobde *a / w Ms. Ankita Pramod Rai for the Appellant.*

Ms. Shilpa G. Talhar, *APP for Respondent No.1-State.*

Ms. Priyanka Chavan *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

DATE : 8 OCTOBER 2024.

P.C. :

1) This is an Appeal filed under provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (**SC & ST Act**) challenging the Order dated 14 June 2024 passed by the learned Special Judge, Solapur rejecting the application for grant of Regular Bail under Section 439 of the Code of Criminal Procedure in connection with C.R. No. 100 of 2024 registered with MIDC Police Station, Solapur for offences punishable under Sections 376, 376(2)(n), 417 of the Indian Penal Code, 1860 and Sections 3(1)(w) (ii) and 3(2)(va) of the SC & ST Act.

2) The FIR is lodged at the instance of the Complainant. The FIR statement would indicate physical relations between the Appellant and the Complainant on 9 January 2024 and 5 February 2024. The Complainant alleges that on both the occasions the Complainant had resisted the sexual act and that the Appellant committed the sexual act under specific promise of marriage. On the third occasion on 4 March 2024, when the Appellant arrived at Complainant's house, he was caught by the Complainant's father and when all the relatives of the Complainant asked the Appellant as to whether he was willing to marry the Complainant, the Appellant flatly refused to do so contending that he was merely using the Complainant and that he never intended to marry her. Therefore, the Complainant has lodged FIR on 5 March 2024.

3) It appears that the Appellant has been arrested on 5 March 2024 and has been in custody since then.

4) I have heard Mr. Thobde, the learned counsel appearing for Appellant, who would submit that the FIR statement clearly indicates that the Complainant was a willing party in the sexual act committed between the duo. That the Appellant has opened the door and facilitated entry of the Appellant on both the occasions. That FIR has been lodged only on account of her father and other family members making enquiries with the Complainant about marriage. That there is a specific admission of love relationship by the Complainant. He would take me through the messages on social media between Complainant and Appellant in support of his contention that no point of time

Appellant gave promise to marry to the Complainant. He would accordingly pray for release of the Appellant on bail.

5) The Appeal is opposed by Ms. Priyanka Chavan, the learned counsel appointed by the Court to represent Respondent No.2 from the Panel of Legal Aid Advocates. She would submit that the consent in the present case has not been obtained voluntarily. She would rely upon Explanation to Section 3(1)(w)(ii) of SC & ST Act in support of her contention that the alleged consent suggested by the Appellant does not qualify the requirement of the said Explanation. She would also draw my attention to the statement of the Complainant recorded under provisions of Section 164 of Cr.P.C. in which again the Appellant has stated that the sexual acts are committed by the Appellant under specific promise of marriage. She would also invite my attention to the affidavit filed before this Court by the Complainant referring to threats given by the Appellant to kill the Complainant and her family members after his release on bail. She would accordingly pray for dismissal of the Appeal.

6) The Appeal is also opposed by Ms. Talhar, the learned APP appearing for Respondent No.1-State. In addition to adopting the submissions of Ms. Chavan, she would additionally submit that the Appellant is resident of the same locality and there is every likelihood of he interfering with the course of trial and tampering with the evidence by giving threats to the Complainant and her family members. She would accordingly pray for dismissal of the Appeal.

7) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the Complainant has specifically admitted existence of love relationship between herself and the Appellant. *Prima facie*, on both occasions, the Complainant herself has allowed the Appellant to enter her house when the alleged acts of sexual intercourse were performed. True it is that the Complainant has alleged that sexual relations were maintained by the Appellant under promise of marriage, the conversation on text messages does not indicate any promise made by Appellant to the Complainant.

8) *Prima facie*, there is nothing to indicate that the Appellant forcibly entered the house of Complainant or committed sexual assault against her desire. The Appellant has been under custody for over seven months. He is 23 years old and cannot be continued to be incarcerated for indefinite period of time. Considering the nature of allegations levelled against him, the Appellant is apparently arrested on account of his flat refusal to marry the Complainant. In the event the Trial Court ultimately finds that the sexual encounters are result of specific promise of marriage, the Appellant can be convicted of offence as alleged against him. However till the trial is completed, it is not appropriate to continue the incarceration of the Appellant. There is no likelihood of the trial being concluded in immediate future. In that view of the matter, the Appellant deserves to be enlarged on bail.

9) The allegations of threat made in the Reply filed by the Complainant are not borne out from any records. How Appellant issued

threats to kill Complainant or her family members while in custody is not clear. Also, the apprehension about threats can be taken care of by imposing stringent conditions.

10) The Appeal is accordingly succeeds and I proceed to pass the following order:

i) Order dated 14 June 2024 passed by the learned Special Judge, Solapur is set aside.

ii) Appellant Ambadas Basavraj Kusma (Accused No.2) arrested in connection with C.R. No. 100 of 2024 registered with MIDC Police Station, Solapur for offences punishable under Sections 376, 376(2)(n), 417 of the Indian Penal Code, 1860 and Sections 3(1)(w)(ii) and 3(2)(va) of the SC & ST Act shall be released on bail on furnishing PR bonds in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

iii) Appellant shall not enter the jurisdiction of MIDC Police Station, Solapur during pendency of the Special Case before the Trial Court.

iv) Appellant shall not attempt to contact the Complainant or any other witnesses associated with the case and shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.

v) Appellant shall furnish identity and address proof of himself and of his two blood relatives while furnishing sureties.

vi) Appellant shall attend Trial Court regularly unless exempted from personal appearance.

vii) The Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Trial Court as well as to the concerned Police Station in writing.

viii) The Appellant shall cooperate with the completion of investigations by remaining present before the investigating officer as and when summoned.

11) With the above directions, the Appeal is allowed and disposed of.

[SANDEEP V. MARNE, J.]