

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 533 OF 2024**

Mayur Bajarang Hake

}*Appellant*

: *Versus* :

The State of Maharashtra & Anr.

}....*Respondents*

Mr. Sahil A. Tejawani *a/w. Mr. Gaurav A. Tejawani, for the Appellant.*

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

Mr. Sujay Gangal, *for Respondent No.2.*

Mr. S.B. Kadam, *PSI, Sangvi Police Station, Pimpri Chinchwad present.*

CORAM : SANDEEP V. MARNE, J.

Dated : 1 July 2024.

P.C. :

1) **This** is an Appeal filed under the provisions of Section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (S.C.S.T. Act) challenging the order dated 7 May 2024 passed by the Special Judge, Pune rejecting the application filed by the Appellant for pre-arrest bail in connection with C.R. No. 164 of 2024 registered with Sangvi Police Station, Pune for offences punishable under Sections 376(2)(n) and

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377 of the Indian Penal Code and under Section 3(1)(w)(i) and 3(1)(w)(ii) of the S.C.S.T. Act.

2) I have heard Mr. Tejawani, learned counsel appearing for the Appellant who would submit that there is admittedly love affair between the Appellant and the First Informant. He would take me through the FIR to demonstrate as to how the relationship between the parties ensued for substantially long period since the year 2019. He would submit that though the main offences arise out of Sections 376 and 377 of the Indian Penal Code, the provisions of S.C.S.T. Act are unnecessarily invoked despite specific contents of the FIR that the Appellant had agreed to marry the First Informant. He would therefore submit that a clear case was made out before the Special Court for grant of anticipatory bail.

3) Mr. Gangal, the learned counsel appearing for Respondent No.2-complainant would oppose the Appeal submitting that mere alleged consent of the complainant cannot be a ground and in any case not a mitigating circumstance for assuming innocence of the Appellant as per the proviso to Section 3(1)(w)(ii) of the S.C.S.T. Act. He would also rely upon the provisions of Section 18 of the Act to contend that there is a specific bar for grant of anticipatory bail in cases involving offences under the S.C.S.T. Act.

4) Ms. Talhar, the learned APP would also oppose the Appeal submitting that the police needs custodial interrogation of the Appellant for recovering messages, as well as photographs present in the mobile phone of the

Appellant. She would further submit that the police desires to conduct medical examination of the Appellant for which again his custodial interrogation is necessary. Ms. Talhar, would fairly concede to the position that the chargesheet has been filed on 17 April 2024.

5) I have considered the submissions canvassed by the learned counsel appearing for the parties. Perusal of the accusations in the FIR would indicate there was admittedly love affair between the Appellant and the Complainant atleast since the year 2019. The Complainant has stated in the FIR that the Appellant had approached her house with a proposal to marry the Complainant. Though there are allegations of sexual relations against the consent of the Complainant, it prima facie appears that sexual interactions the said allegations are consistent since December 2019 and have occurred on several occasions till 22 November 2023.

6) Though Mr. Gangal has relied upon Proviso to Section 3(1)(w) (ii) of the S.C.S.T.Act, in the present case, *prima-facie* the sexual relations between the parties was going on for a considerable period of time. This is not a case of stray allegation, where consensual act of the First Informant needs to be altogether ignored.

7) So far as the bar under the provisions of Section 18 of the S.C.S.T. Act for grant of anticipatory bail is concerned, the Apex Court has held in **Dr. Subhash Suresh Mahajan V/s. The State of Maharashtra¹** and **Prathvi Raj Chauhan V/s. Union of India²**, that there is no absolute bar

¹ (2018) 6 SCC 454.

² Writ Petition (L.) No.1015-1016 of 2015 decided on 10 February 2020.

under Section 18 for grant of anticipatory bail and in a given case where *prima-facie* offence is not made, Courts are competent to grant anticipatory bail even in cases involving offences under the S.C.S.T. Act.

8) The chargesheet has already been filed on 17 June 2024. So far as recovery of mobile phone and photographs from the mobile phone of the Appellant is concerned, Mr. Tejwani has fairly submitted that the Appellant is willing to handover his mobile phone. So far as the Appellant's medical examination is concerned, the Appellant has shown willingness to undergo medical examination. For the purpose of handing over mobile phone, the Appellant has shown willingness to appear before the Investigating Officer, as and when directed by the Court. In view of the above, this is a fit case where the Special Court ought to have granted pre-arrest bail to the Appellant. I accordingly proceed to pass the following order :

(a) The Order dated 7 May 2024 passed by the Special Judge, Pune (Under SC and ST (POA) Act), Pune is set aside.

(b) In the event of arrest of the Appellant in C.R. No. 164 of 2024 registered with Sangvi Police Station, Pune for offences punishable under Sections 376(2)(n) and 377 of the Indian Penal Code and under Section 3(1)(w)(i) and 3(1)(w)(ii) of the S.C.S.T. Act., he shall be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(c) The Appellant shall appear before the Investigating Officer on 9 and 10 July 2024 between 11.00 to 2.00 p.m. and shall co-operate with the conduct of investigations by handing over his mobile phone, as well as by undergoing medical examination.

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

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

(f) Appellant 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.

(g) 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.

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

[SANDEEP V. MARNE, J.]