

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 568 OF 2024

Nilesh Goraknath Karande

}*Appellant*

: *Versus* :

The State of Maharashtra & Anr.

}*Respondents*

Ms. Bhagyashri M. Ranade, for the Appellant.

Ms. Shilpa K. Gajare-Dhumal, APP for Respondent No.1-State.

Mr. Hare Krishna Mishra, for Respondent No.2.

Coram : Sandeep V. Marne, J.

Dated : 15 July 2024.

P.C. :

1) This is an Appeal under Section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**S.C.S.T. Act**) challenging the order dated 26 April 2024 passed by the Additional Sessions Judge for Greater Bombay rejecting the application for bail filed under the provisions of Section 437 of the Code of Criminal Procedure, 1973 (**Code**) in connection with C.R. No. 367/2022 dated 12 July 2022 registered with Nagpada Police Station for the offences punishable under Sections 376,

376(2)(N), 417, 315 of the Indian Penal Code and under Sections 3(1)(w)(ii) and 3(2)(v) of the S.C.S.T. Act.

2) It appears that the Appellant came to be arrested on 28 February 2024. He still continues to be in custody for the last about 5 long months. In the meantime, the police have completed the investigations and have filed the chargesheet on 10 April 2024.

3) Perusal of the statement of the First Informant dated 12 July 2022 would indicate that allegations are leveled in connection with possible consensual sexual intercourse with the Appellant. However, it is the case of the First Informant that the consent is based on misrepresentation and false promise of marriage. Infact, the learned counsel for Respondent No.2 has highlighted the statement of the Appellant's sister in which it is reflected that the Appellant had visited his sister's place in March/April, 2022 and was looking for a bride to marry. The statement further shows that the date of marriage of the Appellant with another woman was fixed as 1 June 2022. The learned counsel for Respondent No.2 has accordingly submitted that despite full knowledge of his ensuing marriage with another lady on 1 June 2022, the Appellant established sexual relations with the First Informant on 20 March 2022, 15 April 2022, 17 April 2022 and 21 May 2022. He has relied upon judgment of the Apex Court in **Sheikh Arif Versus. State of Maharashtra and Anr.**¹ in which the Apex Court has referred to its judgment in **Anurag Soni Vs. State of Chhattisgarh**² in support of the proposition that if the consent of the victim is based on misconception, such consent will be immaterial, because of it being not a voluntary consent. It is further held

¹ (2024) 4 SCC 463

² (2019) 13 SCC 1

that, if it is established that from the inception, the consent by the victim is a result of a false promise to marry, there will be no consent at all, and in such a case, the offence of rape would be made out. However, the above observations are made by the Apex Court in connection with a prayer for quashing of the proceedings. In the present case, what is required to be decided is the prayer for the Appellant for enlargement on bail, particularly after completion of investigation. Considering the nature of accusations made against the Appellant, I am of the view that the Appellant needs to be enlarged on bail considering the position that he is in custody since 28 February 2024 and that the chargesheet has already been filed after completion of investigations on 10 April 2024. At this stage, the learned APP would intervene and submit that infact the full investigations are yet to be completed and the police are contemplating filing of supplementary chargesheet after collection of relevant data from the concerned hotels. In my view, this cannot be a ground for indefinite incarceration of the Appellant. Police ought to have completed all investigations during custody of the Appellant during last five months. Also, grant of bail to Appellant does not mean that he would refuse to co-operate in conduct of further investigations.

4) In that view of the matter, the Appeal succeeds and I proceed to pass the following order :

(i) The order dated 26 April 2024 passed by the Additional Sessions Judge, Mumbai is set aside.

(ii)Appellant shall be enlarged on bail in connection with C.R. No. 367/2022 dated 12 July 2022 registered with Nagpada Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(iii)Appellant shall attend the concerned Police Station as and when required and co-operate in the investigation.

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

(v)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.

(vi)Appellant shall attend every date before the Trial Court, unless exempted. Two consecutive defaults in appearance, shall entitle the prosecution to apply for cancellation of bail.

5) With the above directions, the Appeal is **disposed of**.

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Sandeep V. Marne, J.