

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 727 OF 2024

Abhay Kantilal Rathod

...Appellant

V/s.

The State of Maharashtra and Anr.

...Respondents

Ms Misbaah Solkar a/w *Mr. Gaurav Shenoy i/b Mr. Subhash H. for the Appellant.*

Ms Rashmi S. Tendulkar, APP for Respondent No.1-State.

Ms Priyanka Chavan, for Respondent No.2.

Mr. S.S. Bansode, PN, Shivaji Nagar Police Station, Pune.

CORAM : SANDEEP V. MARNE, J.

Dated : 2 AUGUST 2024.

P.C. :

1) This is an appeal under the provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCST Act) challenging the order dated 3 July 2024 passed by the learned Special Judge, Pune, rejecting the application filed by the Appellant for pre-arrest bail under Section 438 of the Code of Criminal Procedure in

connection with Crime No.78 of 2024 registered with Shivaji Nagar, Police Station, Pune for the offences punishable under Sections 376, 377, 354, 312, 323, 504 and 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(a), 3(1)(r), 3(1)(w)(i), 3(i)(w)(ii), 3(2)(v), 3(2)(va) and Section 6 of the SCST Act.

2) I have heard Ms Solkar the learned counsel appearing for the Appellant, Ms Tendulkar the learned APP appearing for Respondent No.1 – State and Ms Chavan, the learned counsel appearing for Respondent No.2 (appointed through Legal Aid Panel).

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the FIR arises out of consensual sexual relationships between the Appellant and the First Informant since the year 2015. It appears that the FIR is lodged essentially on account of opposition to the marriage between the First Informant and the Appellant by the family members of the Appellant. *Prima facie*, the FIR does not indicate that the Appellant himself has refused to marry the First Informant. Most of the allegations with regard to the opposition to the marriage is against the other accused who are Appellant's family members. So far as the allegations relating to caste-based abuses are concerned, the same are ascribed only to Appellant's mother-Kamlabai and younger brother Ajinkya. So far as Appellant is concerned, the FIR does not contain

allegations with relating to cast-based abuses. It is also the matter of fact that all other accused in the case including Kamlabai and Ajinkya against whom there are allegations of cast-based abuses, are granted anticipatory bail by the learned Special Judge by the same order by which the application preferred by the Appellant got rejected.

4) Since Appellant is not accused any of allegation relating to cast-based abuses, bar under Provision of Section 18 and 18-A would not be attracted in the present case.

5) In my view therefore, Appellant has made out the case for grant of pre-arrest bail. Though Ms Chavan has placed on record the copy of letter signed by the First Informant expressing her 'no objection' to grant bail to the Appellant, in my view, the said letter cannot be considered as the basis for deciding the present Appeal. It appears that the First Informant has been given an assurance on the part of the family of the Appellant about holding a meeting after grant of bail to the Appellant and on that basis she has possibly consented for grant of bail to the Appellant.

6) Be that as it may. The letter dated 1 August 2024 of the Complainant cannot be a basis for deciding the present Appeal. Appeal is being decided after perusal of the material placed on record.

7) The Appeal accordingly succeeds. I accordingly proceed to pass the following order :

- a) Order dated 3 July 2024 passed by the Special Judge in Criminal Bail Application No. 3581 of 2024 is set aside.
- b) In the event of arrest of the Appellant in Crime No.78 of 2024 registered with Shivaji Nagar, Police Station, Pune for the offences punishable under Sections 376, 377, 354, 312, 323, 504 and 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(a), 3(1)(r), 3(1)(w)(i), 3(i)(w)(ii), 3(2)(v), 3(2)(va) and Section 6 of the SCST Act, he 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.
- c) The Appellant shall not pressurise the First Informant by contacting her in direct or indirect manner;
- d) The Appellant shall remain present before the Investigating Officer for investigation as and when summoned and shall co-operate with the investigations.
- e) The Appellant shall keep the Investigating Officer informed of his current address and mobile contact number, and /or

change of residence or mobile details, if any, from time to time.

- 8) With the above directions, the appeal is allowed and disposed of.

SANDEEP V. MARNE, J.

Digitally signed
by GAYATRI
RAJENDRA
SHIMPI
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2024.08.03
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