

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1229 OF 2024

Mrs. Vandana Mahesh Deshmukh

....Appellant

(Orig.Accused)

: **Versus** :

The State of Maharashtra & anr.

....Respondents

(Resp. No.2/orig. Complainant)

ALONGWITH

CRIMINAL APPEAL NO. 1230 OF 2024

Mr. Omkar Mahesh Deshmukh

....Appellant

(Orig.Accused)

: **Versus** :

The State of Maharashtra & anr.

....Respondents

(Resp. No.2/orig. Complainant)

Mr. Niranjana Mundargi a/w. Mr. Saurabh Butala, Mr. Keval Mehta and Ms. Manvi Sharma, for the Appellant.

Ms. Anuja S. Gotad, APP for Respondent No.1-State in Cri. Appeal-1229-2024.

Ms. Shilpa K. Gajare-Dhumal, APP for Respondent No.1-State in Cri. Appeal-1230-2024.

Mr. Amit A. Katarnaware, for Respondent No.2.

Mr. Ramesh Sangle, PSI and Mr. Nilesh Pawar, Head Constable from Panvel City Police Station present.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 November 2024.

P.C. :

1) These Appeals filed under the provisions of Section 14A of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**S.C.S.T. Act**) challenge the orders dated 6 November 2024 passed by the learned Additional Sessions Judge, Panvel, Raigad rejecting the applications filed by the Appellants seeking pre-arrest bail in connection with Crime No.624/2024 registered with Panvel City Police Station for the offences punishable under Sections 64(2)(M) of Bharatiya Nyaya Sanhita, 2023 (**BNS**) and under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(v), 3(2)(vi) of the S.C.S.T. Act.

2) I have heard Mr. Mundargi, the learned counsel appearing for the Appellants who would submit that the FIR statement itself indicates existence of consensual sexual relationship between the Complainant and Appellant-Omkar Mahesh Deshmukh (**Omkar**) for over six long years. He would submit that the WhatsApp between the duo does not indicate that either Appellant-Omkar ever refused to marry the Complainant or referred to her caste at any point of time. Drawing my attention to the detailed WhatsApp chat between the duo, he would submit that the Complainant herself was not interested in marrying Omkar. He would further submit that the WhatsApp chat also indicates differences between the couple on account of alleged interactions of the Complainant with other persons. He would submit that such interactions of Complainant with other persons is the real reason why the couple has broken their relationship. He would

submit breakup of relationship is admitted by the Complainant by way of her last WhatsApp message of 12 October 2024. So far as the caste based allegations levelled against the Appellant-Omkar is concerned, Mr. Mundargi would submit that there is no reference in the FIR statement to the date on which the same were allegedly made by him. So far as caste based utterances relating to the mother (*Mrs. Vandana Mahesh Deshmukh*) is concerned, the same are admittedly made inside the house which is not in public view. He would therefore submit that *prima-facie* case of commission of offences under Section 3(1)(r) and (s) is clearly not made out. So far as the offences under Section 64(2)(M) is concerned, in view of existence of consensual sexual relationship between the couple, absence of any material showing refusal on the part of the Appellant-Omkar to marry the Complainant or to give any false promise of marriage, there is no *prima-facie* material to infer commission of offences under the said provisions. He would rely upon judgment of the Apex Court in **Pramod Suryabhan Pawar Versus. State of Maharashtra and Anr.**¹ in support of his contention that false promise itself must be of immediate relevance or bear a direct nexus to woman's decision to engage in sexual act. He would therefore submit that *prima-facie* case for commission of any offences either under Section 3(1)(w)(i) or (ii) or Section 3(2)(v) or under Section 3(2)(va) is not made out. He would therefore submit that in absence of existence of a *prima-facie* case for having committed any offences by either of the Appellants under any of the provisions of the S.C.S.T. Act, bar under the provisions of Section 18 or 18A would not be attracted in the present case. He would accordingly pray for grant of anticipatory bail to both the Appellants.

¹ (2019) 9 SCC 608

3) The Appeals are opposed by Mr. Katarnaware, the learned counsel appearing for Respondent No.2-Complainant. He would submit that though there is no serious dispute about consensual sexual relationship between the couple, there is an express promise of marriage on the part of the Appellant-Omkar and refusal on his part, as well as opposition on the part of his mother-Vandana to the marriage between the couple only on account of the fact that the Complainant is a member of Scheduled Caste community. He would submit that the alleged WhatsApp interactions between the parties of July or August 2024 are wholly irrelevant in view of specific allegations of the Appellant-Omkar taking the Complainant to a Lodge on 17 September 2024 for committing further acts of sexual intercourse under the false promise of marriage. So far as the allegation of Complainant being in interaction with the other persons, he would submit that there is nothing on record to show that the Complainant was in any sort of objectionable relationship with any third person. He would rely upon the provisions of Section 58 of the Evidence Act in support of his contention that admitted facts need not be proved. He would invite my attention to the averment made by the Appellant-Vandana in her anticipatory bail application about ignorance on the part of Omkar about Complainant's caste and would rely upon the provisions of Section 8 of the S.C.S.T. Act to bring home his point that there is a presumption of knowledge of caste of the Complainant on account of long relationship between the parties spanning over 6 long years. He would submit that the offences under the provisions of Section 69 of the BNS is clearly made out in the present case as the case involves sexual intercourse by the Appellant by employing deceitful means of false promise to marry. He would

submit that since offences under Section 69 of the BNS is punishable for a term exceeding 10 years, offences under the provisions of Section 3(2)(v) and 3(2)(va) is also included in the present case. He would submit that the caste based utterances by both the Appellants have clearly taken place at places in public view thereby making out *prima-facie* case for commission of offences punishable under Sections 3(1)(r) or 3(1)(s) of the S.C.S.T. Act. Lastly, Mr. Katarnaware, would rely upon Government Resolution dated 1 February 2010 introducing a Scheme for financial assistance of Rs.50,000/- for encouraging inter-caste marriages with persons belonging to S.C./S.T. communities. He would submit that the entire intention behind introducing such a Scheme promoting inter-caste marriages with persons belonging to Scheduled Caste or Schedule Tribe is clearly frustrated on account of the acts of the Appellant-Omkar in engaging sexual relationship with the Complainant for over 6 years and later refusing to marry her only on account of the fact that she belongs to Scheduled Caste community. He would therefore pray that since *prima-facie* case of offences punishable under the S.C.S.T. Act are made out, bar under the provisions of Section 18 or 18A is clearly attracted in the present case and that therefore both the Appeals deserve to be dismissed.

4) I have heard Ms. Gajare-Dhumal, the learned APP appearing for Respondent No.1-State. She would also oppose the Appeals. She would submit that the investigations into the crime are yet to be completed and on account of non-availability of the Appellants for questioning, the chargesheet has not yet been filed. They would accordingly oppose grant of anticipatory bail to the Appellants.

5) After having considered the submissions canvassed by the learned counsel appearing for the rival parties and having gone through the relevant records of the case placed before me by them, it is seen that the Complainant herself admitted that she has been in love relationship with the Appellant-Omkar since the year 2018. It appears that sexual relationship between the couple has ensued between 2018 till September 2024. This is not a case involving stray sexual encounter but a clear case of consensual sexual relationship subsisting for a long period of time. Infact, Mr. Katarnaware has fairly admitted existence of consensual sexual relationship between the Complainant and Appellant-Omkar. The short issue which arises for consideration for deciding grant of anticipatory bail to the Appellants is whether there is any *prima-facie* case of commission of any offences under the provisions of the S.C.S.T. Act for application of bar under Section 18 or 18A thereof. Another issue for consideration is whether there is any *prima-facie* material to infer commission of offence either under Section 64(2)(M) or Section 69 of the BNS.

6) Though Mr. Katarnaware has strenuously relied upon the provisions of Section 69 of the B.N.S., Ms. Gotad and Ms. Gajare-Dhumal would clarify that Section 69 of the B.N.S. have not been invoked in the present case. If that is the case, it is incomprehensible to why the learned Special Judge has proceeded to consider the provisions of Section 69 of the B.N.S. while deciding application for anticipatory bail filed by the Appellants. Even otherwise, I am of the view that Section 69 of the B.N.S. would have no application in the present case as the Explanation to Section 69 defines the term '*deceitful means*' to include inducement for sexual intercourse or false promise of employment or promotion or marrying by suppressing

identity. Thus, in addition to either inducement for or false promise of 'employment' or 'promotion', the third event included in the Explanation is 'marrying by suppressing identity'. Thus *prima-facie* what is required for attraction of Section 69 is 'marrying by suppressing identity'. In the present case, there is neither marriage between the parties nor there is any allegation of suppression of identity. This appears to be reason why the Investigating Officer has rightly not invoked Section 69 of the B.N.S.

7) Coming to the offences under the provisions of Section 3(1)(r) and 3(1)(s), both the offences require either humiliation or abusing to the member of a Scheduled Caste or a Scheduled Tribe in any place within public view. FIR statement makes reference to three instances relating to both the Appellants. So far as Appellant-Omkar is concerned, Complainant vaguely alleges that after few months of September 2024, her father summoned Omkar for enquiring about marriage with the Complainant, when he sought time to get settled. Thereafter, the Complainant started enquiring with Omkar about the marriage and at that time, the alleged caste based utterances are made by him. Thus, the exact date on which the caste based utterances are made by Omkar is not disclosed in the FIR statement. Similarly, the place at which the same are allegedly made is also not disclosed. The allegations are vague in nature.

8) So far as Appellant-Vandana is concerned, the allegation against her pertains to 17 October 2024 when the Complainant visited Omkar's house alongwith her father and relatives. It is claimed that the alleged utterances were made by the Appellant-Vandana inside the house. Therefore, *prima-facie* there is nothing to indicate that

there is any caste based utterances or humiliation was made at a place within public view. It appears that there is additional allegation that refers to the Appellant-Vandana making caste based utterances, but the same are again made in the house of Vandana.

9) In my view, therefore there exists no *prima-facie* case of commission of any of the offences under the S.C.S.T. Act. The case clearly involves existence of long consensual sexual relationship between the Complainant and Appellant-Omkar. The WhatsApp chat relating to 31 July 2024 infact suggests disinclination on the part of the Complainant to marry Omkar and inclination on his part to marry her. The Complainant clearly expressed on 31 July 2024 that the nature of the two was different and that the same did not match. Though Mr. Mundargi has sought to highlight some interactions by the Complainant with third persons as the real reason for discord between the couple, in my view, it is not necessary to delve deeper into the said aspect at this stage. Least what needs to be done on the basis of material available on record is to draw a *prima-facie* inference that the sexual relationship stem out of voluntary consent by the Complainant. *Prima-facie*, there is nothing to indicate refusal on the part of the Appellant-Omkar or his mother, Vandana for marriage only on account of the fact that the Complainant is a member of Scheduled Caste community. In my view, therefore absence of *prima-facie* case for commission of any offence under the S.C.S.T. Act, the bar under the provisions of Section 18 or 18A thereof would not be attracted in the present case. In that view of the matter, Appellants deserve to be granted protection from arrest and I accordingly proceed to pass the following order :

(i) Orders dated 6 November 2024 passed by the learned Additional Sessions Judge, Panvel, Raigad are set aside.

(ii) In the event of arrest of the Appellants in connection with Crime No.624/2024 registered with Panvel City Police Station for the offences punishable under Sections 64(2)(M) of Bharatiya Nyaya Sanhita (**BNS**) and under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(v), 3(2)(vi) of the S.C.S.T. Act, they shall be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or two solvent sureties in the like sum.

(iii) Appellants shall remain present before the Investigating Officer on 2, 3 and 4 December 2024 and shall co-operate in the investigations.

(iv) Appellants shall not contact the Complainant or any witnesses associated with the case nor shall pressurize or threaten her and shall not tamper with the evidence.

(v) Appellants shall remain present before the Trial Court on each date of hearing unless exempted from personal appearance.

10) With the above directions, both the Appeals are allowed and disposed of.

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[SANDEEP V. MARNE, J.]