



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 25 OF 2024

APPELLANT: Saurabh s/o Sunilsingh Sengar,
Aged about 30 years, Occu: Private,
R/o Plot No. 49, Umred Road, Near Mata
Bhawani Mandir, Sarvashi Nagar, Dighori,
Nagpur.

...V E R S U S...

RESPONDENTS 1] State of Maharashtra,
PSO PS Sonegaon, District Nagpur.

2] XYZ (Victim)
(In Crime No-437/2023), Through PSO
P.S Sonegaon, Nagpur.

Mr. P.S. Jaiswal, counsel for the appellant.
Mr. N.R.Rode, APP for the respondent No.1.
Mr. Aditya Pande, counsel (appointed) for the respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **28/02/2024**

ORAL JUDGMENT :

1. Heard. **Admit.**
2. Heard finally with the consent of the learned counsel
appearing for the parties.
3. By this appeal, the appellant has challenged the order
passed by the Additional Sessions Judge-9 and Special Judge, the

Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in Criminal Bail Application No.3374/2023 dated 02/01/2024 by which the application of the present appellant for grant of bail is rejected.

4. The accusation against the present appellant is on the basis of report lodged by the victim, aged about 28 years, on an allegation that the informant and the appellant are dealing with the business as partners and in the year 2021, the love affair was developed between them. On 10/07/2023, the appellant taken her at Mahindra Bloom Dale Society, Mihan, to show the flat to one customer, and when the customer has left the spot, the appellant asked the sexual favour from her. At that time, she denied it on the pretext that he should perform the marriage first and thereafter, there would be a physical relationship between them. By giving assurance her to marry, he had subjected her for sexual assault knowing that, she belongs to the Scheduled Caste, and thereby committed an offence. On the basis of said report, the police have registered the crime against the present appellant.

5. After registration of the crime, the present appellant approached the Special Court for grant of bail. The learned trial Court rejected the bail by observing that the victim was subjected

for sexual assault by the present appellant, and prima-facie case is made out against the present appellant.

6. Being aggrieved and dissatisfied with the said order, the present appeal is preferred by the appellant on the ground that the learned trial Court failed to consider that there was a love affair between the appellant and the victim and that the physical relationship was in the nature of the consensual relationship.

7. Learned counsel further submitted that now investigation is completed and charge-sheet is filed, mere breach of promise is not sufficient to attract the provisions of the Act of 1989 to hold that the victim is subjected for sexual assault by the present appellant. Moreover, now the investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, he be released on bail.

8. Learned APP strongly opposed the said appeal on the ground that considering the gravity and seriousness of the offence, and there is apprehension that if the appellant is released on bail, he will tamper the prosecution evidence. The learned trial Court rejected the application. The appeal is devoid of merits and liable to be dismissed.

9. Learned counsel for the respondent No.2/victim also endorsed the same contention and prays for dismissal of the appeal.

10. After hearing both the sides and on perusal of the investigation papers, it reveals that there was a love affair between the victim and the present appellant. The allegation by the present victim is that she belongs to the Scheduled Caste and the appellant was knowing about the same. There was a love relationship between both of them. As per the allegation, the present appellant promised her for marriage and developed a physical relationship with her. Whereas, as per the contention of the appellant, there was a consensual relationship between them.

11. Moreover, the statement of the victim reveals from the last three years, they were in relationship. Thus, it appears that out of the said love relationship, they had a physical relationship. Whether there was an intention since inception is a matter of trial. At this stage, now the investigation is completed and charge-sheet is filed, and considering the circumstances under which the physical relationship was developed between them, shows that, it was a consensual relationship. Now the investigation is already completed and charge-sheet is already filed, further incarceration

of the present appellant is not required.

12. The learned trial court ought to have considered the relationship between the victim and the present appellant from last three years, and whether it was a breach of promise or there was an intention to cheat the victim since inception, it is a matter of trial. The observation of the learned trial Court appears to be erroneous. In view of that, the order passed by the learned trial Court deserves to be set aside. Accordingly, I proceed to pass the following order:

- a) The criminal appeal is **allowed**.
- b) The order passed by the Additional Sessions Judge-9, and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Criminal Bail application No. 3374/2023, dated 02/01/2024, is hereby quashed and set aside.
- c) The appellant – **Saurabh s/o Sunilsingh Sengar**, is released on bail, in connection with Crime No.437/2023 registered with Police Station, Sonegaon, District- Nagpur for the offences punishable under Sections 376 (2), (n), 417 of the Indian Penal Code, 1860 and under Sections 3 (1)(w) (i), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on

executing PR Bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

- d) The appellant shall not induce, threat or promise to any person who are acquainted with the facts of the present case.
- e) The fees of the learned appointed counsel be quantified as the Rules.

The Criminal Appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]