



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

CRIMINAL APPEAL NO.89 OF 2024

Ajay s/o Vijay Hattimare
Age 20 years, Occupation – Education
R/o. Mangalwari Peth, Jivan Vikas Chouk,
Umrer, Tah. Umred,
District Nagpur

...APPELLANT

VERSUS

1. State of Maharashtra,
through P.S.O. Umrer,
District Nagpur
2. XYZ victim in Crime No.337/2023
through PSO Umrer,
Tah. Umred,
District Nagpur

...RESPONDENTS

Mr. A.G. Hunge, Advocate for the appellant.
Mr. N. Autkar, APP for the State.
Ms A.S. Mishrikotkar, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 22, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 17/10/2023 whereby the Special Judge and Additional Sessions Judge-9, Nagpur rejected the bail application of the appellant in Criminal Bail Application No.2476/2023.

3. The appellant is arrested on 20.06.2023 in connection with Crime No.337/2023 registered at police station Umred, District Nagpur for the offence punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code, Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The crime is registered on the basis of report lodged by the victim aged about 17 years belongs to the scheduled caste on an allegation that she got acquaintance with the present applicant as he is the brother of her friend which resulted into the love relationship. She alleged that he proposed her and in the month of February, 2023 on the promise of marriage he took her in the dilapidated house and subjected her for sexual assault. Thereafter repeatedly the said incident has taken place due to which she was pregnant but her pregnancy was terminated. Subsequently, the appellant declined to perform the marriage with her.

On the basis of said report police have registered the crime against the present appellant.

4. After registration of the crime, the appellant was arrested and he approached to the Sessions Court for grant of bail. However, considering the victim is minor and her consent is not relevant, Special Court has rejected the bail application of the appellant.

5. Being aggrieved with the same, present appeal is preferred by the appellant. It is submitted by the learned Counsel for the appellant that there was a love affair between the victim and the present appellant. Out of love affair there was a physical relationship. Mere breach of promise is not sufficient to attract the provisions of either POCSO Act or the offence punishable under Section 375 of the IPC. He submitted that the victim is on the verge of majority and she knows the consequences of her act. Thereafter the incident is happened with the consent of the victim and out of love affair. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, the appellant be released on bail.

6. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 strongly opposed the said application on the ground

that the act of sexual assault by the present appellant is on the promise of marriage and thereafter the appellant has denied to perform the marriage. It is not mere breach of promise but the intention of the act of the appellant to dupe the victim. In view of that, the appeal deserves to be rejected.

7. Having heard the learned Counsel for the appellant, learned APP for the State and learned Counsel for respondent No.2. Perused the statement of the victim recorded by the police as well as the statement under Section 164 of the Cr.P.C. From both the statements out of love affair there was a relationship between them. It further appears that the present appellant promised her for marriage and subsequently denied to perform the marriage. As far as the breach of promise is concerned or intentional breach of promise, is a matter of evidence. At this stage, considering there was a physical relationship and now the investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. This fact is not considered by the Special Court while considering the bail application of the present appellant. In view of that, the appeal deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order :

- (i) The appeal is allowed.

(ii) The order dated 17/10/2023 passed by the Special Judge and Additional Sessions Judge-9, Nagpur in Criminal Bail Application No.2476/2023, is hereby quashed and set aside.

(iii) The appellant – Ajay s/o Vijay Hattimare in connection with Crime No.337/2023 registered at police station Umred, District Nagpur for the offence punishable under Sections 363, 366, 376(2)(n) of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 read with Section 3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall not enter into the vicinity of village Kholdoda, Post Nand, Taluka Bhiwapur, District Nagpur till the culmination of the trial.

(v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) Contravention of any of the conditions would lead to cancellation of bail.

8. The appeal is disposed of accordingly.
9. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*