



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

**CRIMINAL APPEAL NO.188 OF 2023**

Nirvedh Avinash Deshmukh  
Age 32 years, Occupation – Service  
R/o. Samarthwadi, Govindprabhu,  
Sai Nagar, Amravati,  
Tq. and District Amravati

**...APPELLANT**

**VERSUS**

1. State of Maharashtra,  
through P.S.O.  
Police Station Nandgaon Peth,  
District Amravati
2. XYZ  
Victim in Crime No.154/2022  
Registered with P.S. Nandgaon Peth,  
Amravati City

**...RESPONDENTS**

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Mr. S.B. Gandhe, Advocate for the appellant.  
Mr. N. Autkar, APP for the State.  
Mr. A. Darunde, Advocate (appointed) for respondent No.2.

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**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : APRIL 30, 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 08/03/2023 whereby the Special Judge and Additional Sessions Judge-1, Amravati rejected the anticipatory bail application of the appellant in Criminal Bail Application No.307/2023.

3. Learned Counsel for the appellant submitted that the accusation against the present appellant is on the basis of report lodged by the victim aged about 24 years alleging that she got acquaintance with the present appellant and thereafter there was a love affair between them. She was in the relationship with the present appellant from June, 2021 and she was subjected for the sexual assault by the appellant on the promise of marriage. Subsequently, he denied to perform the marriage with her, and therefore, she approached to the police station and lodged the report. On the basis of said report police have registered the crime against the present appellant. After registration of the crime, present appellant approached to the Sessions Court for grant of pre-arrest bail, the same was rejected and he preferred an appeal before this Court wherein he was protected by granting anticipatory bail. After filing of the charge-sheet, he again approached to the Sessions Court for confirming the anticipatory bail which was

rejected by the Special Court and hence he preferred this appeal. He submitted that from the statement of the victim, it is clear that out of love affair there was a sexual relationship between the present appellant and the victim. As far as breach of the promise is concerned which was not since inception, mere breach of promise is not sufficient to attract the provisions of the Atrocities Act and the offence under Section 376 of IPC. He submitted that now investigation is already completed, charge-sheet is filed, the incarceration of the present appellant is not required as nothing is to be recovered from him. In view of that, he prays for grant of anticipatory bail. He further submitted that bar under Section 18 of the Atrocities Act is not attracted as the recitals of the FIR itself shows that out of love affair by consent there was a physical relationship between the victim and the present appellant.

4. Learned Additional Public Prosecutor strongly opposed the appeal on the ground that considering there is a bar under Section 18 of the Atrocities Act, the application deserves to be rejected and no interference is called for in the order passed by the Special Court. Learned Counsel for respondent No.2 endorsed the same contention and submitted that considering the allegation made by the victim, learned trial Court has rightly rejected the application and no interference is called for.

5. I have heard learned Counsel for both the parties. Perused the investigation papers. There is no dispute as to the fact that there was a love affair between the victim and the present appellant. Victim is a grown up lady aged about 24 years. As per the recitals of the FIR out of love affair there was a physical relationship between them and prior to lodging of the FIR she never complained that she was subjected for sexual assault forcefully by the present appellant. Thus, from the recitals of the FIR reveals that the act of physical relationship was by consent. Admittedly, whether there was a free consent or not is a matter of evidence. At this stage, now investigation is already completed and charge-sheet is filed and the custodial interrogation of the present appellant is not required. It is also well settled that mere breach of promise is not sufficient to attract the provisions of the Atrocities Act or to attract the offence punishable under Section 376(2)(n) of the IPC. As already observed that whether there was a free consent or not is a matter of evidence. Whether there was an intentional breach of promise is also a matter of evidence. At this stage, considering the fact that now investigation is already completed, charge-sheet is already filed and custodial interrogation of the present appellant is not required, the application deserves to be allowed. Learned trial Court has not considered this aspect and rejected the application, and therefore, the

order of the trial Court deserves to be quashed and set aside.

Accordingly, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The order dated 08/03/2023 passed by the Special Judge and Additional Sessions Judge-1, Amravati in Criminal Bail Application No.307/2023, is hereby quashed and set aside.
- (iii) In the event of the arrest, the appellant – Nirvedh Avinash Deshmukh in connection with Crime No.154/2022 registered at police station Nandgaon Peth, District Amravati for the offence punishable under Sections 376(2)(n) and 417 of the Indian Penal Code and under Sections 3(1)(w)(i) (ii), 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on anticipatory 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 in any manner communicate with the victim and shall not enter into the vicinity of Prashant Nagar, Amravati 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.

6. The appeal is disposed of accordingly.

7. The fees of the appointed Counsel be quantified as per rules.

**(URMILA JOSHI-PHALKE, J.)**

*\*Divya*