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

CRIMINAL APPEAL NO.212 OF 2024

Bhaskar s/o Lakhanlal Mankar,
Aged about 34 Years,
Occupation – Labour,
Resident of Sarkartola,
Tahsil Amgaon,
District Gondia.

..... APPELLANT

// VERSUS //

01. The State of Maharashtra,
Through Police Station Officer,
Police Station, Tiroda,
District Gondia.

02. XYZ – Victim in Crime
No.139/24 registered at
Police Station, Tiroda,
District Gondia.

.... RESPONDENTS

Mr. Atharva S. Manohar, Counsel for the appellant.
Ms. Sneha Dhote, APP for respondent No.1/State.
Ms. Anuprita S. Mishrikotkar, appointed Counsel for the
respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20.08.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

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3. By preferring this appeal, the appellant has challenged the order dated 27.03.2024 passed by the District Judge – 1 and Additional Sessions Judge, Gondia by which he has rejected the bail application for grant of anticipatory bail bearing Misc. Criminal Application No.87/2024.

4. Learned Counsel for the appellant submitted that the appellant is prosecuted for the offence punishable under Section 493 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as to 'the Act of 1989'). He submitted that from the recitals of the FIR it reveals that there was a friendship between the present appellant and the victim which resulted into a love affair. The said relationship was for a long period and out of the said relationship, there was a physical relationship. He submitted that it was a consensual physical relationship between them out of a love affair and as the family members of the appellant denied to perform the marriage, the report is came to be filed. He submitted that as per the allegations, the appellant has pretended that marriage is performed with the victim and

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therefore, it was alleged that on the promise of marriage and by pretending that he had performed the marriage there was a physical relationship between the victim and the appellant, the offence came to be registered. He invited my attention towards the statement of the victim as well as the statements of the other witnesses and submitted that from which it reveals at her own accord she stayed along with the present appellant therefore, offence under Section 493 of the Indian Penal Code is not made out, in view of that the interim protection granted to the present appellant deserves to be confirmed.

5. Learned APP and learned appointed Counsel for the respondent No.2 – victim strongly opposed the said appeal and submitted that since inception, there was an intention to cheat the victim and therefore, it was pretended that he had performed the marriage and subjected her for sexual assault.

6. Heard learned Counsel for both the parties, perused the recitals of the FIR. It reveals from the recitals of the FIR that there was a love affair between the victim and the present appellant and out of that they had a

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physical relationship. She stayed along with the appellant also. It appears there was a marriage performed between the present appellant and the victim. As far as the breach of the promise or intention since inception is concerned, the observation of the Hon'ble Apex Court in the case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and Others [Arising out of SLP (Cri.) No.6532 of 2018]** is relevant wherein it is observed by the Hon'ble Apex Court. "Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the appellant had actually wanted to marry the victim or had *mala fide* motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where

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an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently.”

7. Admittedly, in the present case offence is not registered against the present appellant under Section 376 of the Indian Penal Code, but it was alleged that the offence is made out under Section 493 of the Indian Penal Code. If Section 493 of the Indian Penal Code is seen it dealt with the cohabitation caused by a man deceitfully inducing a belief of lawful marriage. It further states that every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. The said offence is non-cognizable and non-compoundable.

8. Considering the statement of the victim it reveals that as per her allegation the appellant has taken her in one temple on 03.12.2023 and by garlanding her as well as by

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wearing the Mangalsutra it was pretended that she performed the marriage with her. It reveals from one statement that they have also obtained the photographs of the said incident in the mobile phone of the present appellant. Thus, by considering the entire statement of the victim it reveals that she was fully aware that she was residing along with the present appellant and there was a physical relationship between them by understanding all these things. As far as the custodial interrogation is concerned, which is not required. It appears to be a consensual act of the victim and the present appellant. In view of that the appellant has made out a case for grant of anticipatory bail. Accordingly I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 27.03.2024 passed by the learned District Judge -1 and Additional Sessions Judge, Gondia rejecting the bail application is hereby quashed and set aside.
- (iii) The interim protection granted to the present appellant by order dated 15.04.2024 is hereby confirmed on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount.

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(iv) The appellant shall not enter into the vicinity of Thanegaon, Taluka Tiroda, District Gondia, till culmination of the trial.

(v) The appellant shall attend the concerned Police Station once in a week on every Sunday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(vi) The appellant shall furnish his cell phone number and address with address proof before the Investigating Officer.

(vii) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

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

10. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.