



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

CRIMINAL APPEAL NO. 225 OF 2024

APPELLANT: Bhashkar Balaji Borkute,
Aged about 31 Years, Occu: Agriculturist,
R/o Fulora Heti, Near Hanuman Mandir,
Ward No.2, Post-Bhangaram Talodi,
Tah. Gondpipari, District -Chandrapur.

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

RESPONDENTS 1] The State of Maharashtra,
through P.S.O. Gondpipri,
District Chandrapur.
2] XYZ (Victim) in Crime No. 82/2024,
P.S.O. Gondpipri, District – Chandrapur.

Mr. M.V. Rai, counsel for the appellant.
Mr. C.A. Lokhande, APP for respondent No.1.
Ms. Radha Mishra, counsel (appointed) for respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **01/07/2024**

ORAL JUDGMENT :

1. Heard. **Admit.** Heard finally with the consent of learned counsel appearing for the parties.
2. By way of this appeal, the appellant has challenged the order passed by the Special Judge, Chandrapur in Misc. Criminal Application No. 204/2024 by which the anticipatory bail

application of the present appellant is rejected.

3. The appellant is apprehending arrest at the hands of police as crime is registered on the basis of report lodged by the victim, alleging that she got acquaintance with the present appellant in the year 2019 when she was studying in the 10th standard. The said friendship resulted into love affair and out of love affair she used to communicate with him as well as they used to roam at various places. She further alleged that appellant on 28/03/2020 took her in one agricultural field and subjected her for sexual assault. It is further alleged that on the various occasions and on the promise of marriage, she was subjected her sexual assault. On the basis of said report, the police have registered the crime.

4. After registration of the crime, he approached to the Special Court for grant of pre-arrest bail, however, the Special Court has rejected the application by observing that in view of bar under Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short 'the Atrocities Act'), the application is rejected. Being aggrieved and dissatisfied with the same the present appeal is preferred by the appellant.

5. The learned counsel for the appellant submitted that as far as the allegations are concerned it shows that out of love affair there was a physical relationship between the appellant and the victim and also consensual sexual relationship was developed between the victim and the present appellant. Mere breach of promise of the marriage, is not sufficient to attract the provisions of the Atrocities Act. In view of that, the appellant be protected by granting anticipatory bail.

6. The learned APP and learned appointed counsel for the victim submitted that when initially sexual assault was committed by the applicant, at the time, victim was minor and her consent was not relevant. They further submitted that there is a breach of promise and the intention of the present appellant can be gathered from the circumstances. In view of that, the appeal deserves to be dismissed.

7. After hearing learned counsel for the appellant, learned appointed counsel and learned APP for the State, perused the recitals of the FIR from which it reveals that victim got acquaintance with the present appellant when she was minor. As per her allegation, in November-2019 present appellant expressed his feelings and also promised her for marriage and first incidence

of sexual assault on her was 28/03/2020. From the recitals of the FIR it reveals that, on the promise of marriage and out of love affair there was a physical relationship. Now, it is well settled that mere breach of promise is not sufficient to attract the provisions of Section 376 of the Indian Penal Code. As far as the allegation of the Atrocities Act is concerned, there is no statement that though the appellant was aware that she belongs to the Scheduled Caste and Scheduled Tribes with intent to humiliate or insult her, she was subjected her for sexual assault. It is apparent that, out of love affair, the physical relationship was there, and therefore, the interim protection granted to the present appellant deserves to be confirmed. Accordingly, I proceed to pass following order:

- a. In the event of arrest, the appellant – **Bhashkar Balaji Borkute** shall be released on anticipatory bail, in connection with Crime No.82/2024 registered with Police Station Gondpipri, District Chandrapur for the offence punishable under Sections 376, 376(2)(n), 504 and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 3 (1)(w), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act on executing a PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- b. The order passed by the learned Special Judge and Additional Sessions Judge, Chandrapur dated 03/04/2024 in Misc. Criminal Application No. 204/2024 is hereby quashed and set aside.
- c. The appellant shall attend the concerned police station as and when required for the investigation purpose and shall produce his motorcycle for the investigation purpose and shall cooperate with the investigating agency.
- d. The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e. Breach of any condition would lead to the cancellation of the bail.
- f. The fees of the appointed counsel be quantified as per the Rule.

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

[URMILA JOSHI-PHALKE, J.]