



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

CRIMINAL APPEAL NO. 257 OF 2024

APPELLANT: Krishna s/o Shankar Kadam,
Aged about 24 years, Occu: Student,
R/o Kalambeshwar, Tq. and District Akola.

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

RESPONDENTS 1] State of Maharashtra,
through Police Station Officer,
Shegaon Police Station,
District Buldhana at present
through Dy. S.P. Khamgaon.

2] Miss XYZ
(Victim/Informant in Crime No.191/2024
registered by Shegaon Police Station,
District Buldhana).

Mr. Sumit G. Joshi, counsel for appellant.

Mrs. H.N.Prabhu, APP for respondent/State.

Mrs. Shubhada K. Phaltankar, counsel (appointed) for the
respondent No.2.

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

DATE : **26/07/2024**

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. Heard finally with the consent of learned counsel

appearing for the parties.

4. The appellant has challenged the order dated 24/04/2024 passed by the Special Judge, Khamgaon, District Buldhana, in Anticipatory Bail Application No.140 of 2024. The appellant is apprehending the arrest at the hands of police in connection with Crime No.191/2024 registered at Police Station Shegaon, District Buldhana for the offences punishable under Sections 376(2)(n), 417, and 506 of the Indian Penal Code; and Sections 3(1)(w)(i), 3(1)(w)(ii), and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred for short 'the Atrocities Act').

5. The accusation against the present appellant is on the basis of a report lodged by the victim, who is aged about 20 years, alleging that she got acquaintance with the present appellant when she was studying in the college, and the said acquaintance turned into a love relationship. She was having a love relationship with the present appellant, and from the last two years on several occasions, the accused took her in various lodge and subjected her for sexual assault against her consent. She further alleged that though the present appellant was knowing that she belongs to the Schedule Caste, he, on the promise of marriage, subjected her for

sexual assault, and thereby committed the offence.

6. After registration of the crime, the appellant approached to the Special Court for grant of anticipatory bail, but the learned Special Court has rejected the application by holding that there is a bar under Section 18A of the Atrocities Act. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the appellant.

7. Learned counsel for the appellant submitted that, as far as the recitals of the FIR is concerned, which shows that there was a consensual relationship between the present appellant and the informant. The appellant has also shown his willingness to perform the marriage with the victim, but the victim and her parents have demanded two acres of land from him, and therefore, the marriage is not performed. He also invited my attention towards the application filed by him to the Superintendent of Police, Akola, mentioning all these facts. He submitted that by taking disadvantage of this relationship, the informant has black-mailed the present appellant and lodged the false report. He submitted that, as far as the custodial interrogation is concerned, which is not required. In view of that, the appeal deserves to be allowed.

8. Learned APP and the learned appointed counsel for respondent No.2 strongly opposed the said application on the ground that, on the promise of marriage, the victim was subjected for sexual assault. There is a bar under Section 18 of the Atrocities Act, and there is recitals in the report itself shows that the appellant was aware about the fact that, she belongs to the Scheduled Caste, and despite of that, he subjected her for sexual assault. There are criminal antecedents against the present appellant, as one more FIR is registered against him. In view of that, the prayer for grant of anticipatory bail deserves to be rejected.

9 After hearing learned counsel for both the parties, perused the recitals of the FIR as well as the documents filed by the appellant, there is no dispute as to the fact that there was a love relationship between the informant and the present appellant. It is further apparent that, out of the said relationship, there was a consensual physical relationship between them. The submission of learned counsel for the appellant shows that the appellant has shown willingness to perform the marriage, but the victim has demanded 2 acres of land, which could not be fulfilled, and therefore, the marriage was not performed. It is well settled that

mere breach of promise is not sufficient to attract the provisions under Section 376 the Atrocities Act; there can be a several reasons for not performing the marriage. As far as the reason assigned by the present appellant is concerned, it is supported by his application, which was filed by him before lodging of the report. Considering the fact that there is a consensual relationship between the victim and the present appellant, the prima-facie case is not made out, and therefore the bar under Section 18 the Atrocities Act is not attracted. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

- (a) The criminal appeal is allowed.
- (b) In the event of the arrest, the appellant- Krishna s/o Shankar Kadam, shall be released on anticipatory bail, in connection with Crime No.191/2024 registered at police station Shegaon, District Buldhana for the offence punishable under Sections 376(2)(n), 417, 506 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- (c) The order passed by the learned Special Judge, Khamgaon in Anticipatory Bail Application No. 140/2024 is hereby quashed and set aside.
- (d) The appellant shall attend the concerned police station once in a week on every Monday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency, till filing of the charge-sheet.
- (e) The appellant shall furnish his cell phone number and cooperate with the investigating agency. If he has already produced the same, the investigating officer is at liberty to investigate the matter accordingly.
- (f) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- (g) The fees of the appointed counsel be quantified as per Rule.

Criminal Appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]