



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

CRIMINAL APPEAL NO.298 OF 2024

Shri Dhananjay @ Karan s/o Vilas Hiwarkar,
Aged 29 years, Occupation – Agriculture,
Aadhar No. 4482 7877 8054
R/o At Post Malegaon, Tah.Saoner,
District Nagpur

...APPELLANT

VERSUS

1. State of Maharashtra,
through the Police Station Officer,
P.S. Devalapar, District Nagpur
2. The Sub-Divisional Police Officer,
Sub-Division Ramtek,
District Nagpur
3. XYZ,
in Crime No.111/2024
P.S. Devalapar, District Nagpur

Corrected as per
Court's order dated
13/11/2024

...RESPONDENTS

Mr. P.S. Khubalkar, Advocate for the appellant.
Mr. U.R. Phasate, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : SEPTEMBER 4, 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, the appellant has challenged the order dated 30/04/2024 passed by the Additional Sessions Judge-8 and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act in Criminal Bail Application No.1015/2024 by which the application of the present appellant for grant of anticipatory bail is rejected.

3. The appellant is apprehending arrest at the hands of police in connection with Crime No.0111/2024 registered with Devalapar Police Station, District Nagpur for the offence punishable under Sections 376(2)(n), 506 of IPC read with Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 (hereinafter referred to as 'the Atrocities Act' for short).

4. The accusation against the present appellant is on the basis of report lodged by the victim who is 27 years old and alleges that she belongs to Scheduled Tribe. There was a love affair between her and the present appellant. The appellant promised her for marriage and their marriage was also settled. Engagement ceremony was also performed but on 13/02/2024 at about 10 AM the appellant came to her house and in absence of her parents by taking disadvantage of the same subjected

her for forceful sexual assault on the promise of marriage. She further alleged that prior to that incident also on 16/02/2023 when her parents were in the house he subjected her for forceful sexual assault on the promise of marriage and subsequently he denied to perform the marriage. On the basis of said report, police have registered the crime against the present appellant.

5. Learned Counsel for the appellant submitted that as far as sexual relationship between the appellant and the victim is concerned, it is admittedly by consent as there was a love affair between them. At the most it can be termed as breach of promise but it is not an intentional act of the present appellant to subject the informant for sexual assault. He submitted that there was a consensual relationship between the victim and the appellant. As far as the allegations are concerned which are false one. Only the act which can be attributed to the present appellant that breach of promise of marriage. As far as the intention since inception is concerned there is no material to infer that intentionally present appellant has subjected her for sexual assault on the promise of marriage and subsequently denied to perform the marriage. He submitted that there can be several reasons for not performing the marriage. As far as the custodial interrogation concerned which is not required, and therefore, prays for confirming the

anticipatory bail granted to the present appellant by order dated 21/05/2024.

6. Learned Additional Public Prosecutor strongly opposed the appeal on the ground that it is not mere a breach of promise but since inception there was an intention not to perform the marriage and on the promise of marriage subjected her for sexual assault, therefore, the prayer for grant of anticipatory bail deserves to be rejected.

7. Though the victim is served and engaged the Counsel but her Counsel is not appearing.

8. Heard learned Counsel for the appellant and the learned Additional Public Prosecutor for the State. Perused the investigation papers. From the recitals of the First Information Report and the statement of the victim it reveals that the appellant has proposed her for marriage. There was a love affair between them and the parents have also consented for the said marriage. Engagement ceremony was also performed but subsequently the marriage was not performed. As far as the allegation regarding the sexual assault is concerned, from the statement of the victim it appears that since last two years they were in a relationship and out of that relationship there was a physical relationship between them. As far as the intention of the present

appellant is concerned is to be inferred from the circumstances. Considering that the Engagement ceremony is also performed between the present appellant and the victim, therefore, the contention of the prosecution that there was no intention to perform the marriage is not substantiated.

9. The Honourable Apex Court has dealt with this issue in the case of *Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P (Criminal) No.6532 Of 2018)* in para number 20 which reads as under:

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 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. If the complainant had

any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

10. As far as the bar under Section 18A is concerned now it is well settled that when the *prima facie* case is not made out the bar is not attracted. Considering the fact that there was a consensual relationship between the present appellant and the victim the appellant has made out a case to grant him anticipatory bail. In view of that, the interim protection granted to the appellant vide order dated 21/05/2024 deserves to be confirmed by imposing similar terms and conditions. In view of above, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order dated 30/04/2024 passed by the Additional Sessions Judge-8 and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act in Criminal Bail Application No.1015/2024, is hereby quashed and set aside.
- (iii) In the event of arrest, the appellant - Shri Dhananjay @ Karan s/o Vilas Hiwarkar in connection with Crime No.0111/2024 registered with Devalapar Police Station,

District Nagpur for the offence punishable under Sections 376(2)(n), 506 of IPC read with Section 3(1)(w)(i), 3(1)(w)(ii), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989, be released on anticipatory bail on executing P. R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. and 01.00 p.m. and shall cooperate with the investigating agency, till filing of the charge-sheet.

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

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

11. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)