



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

CRIMINAL APPEAL NO. 323 OF 2024

APPELLANT:

Mohit Sanjay Pande,
Aged 32 years, Occu: Private,
R/o Plot No.1, Santoshi Nagar,
Pipla Road, Ayodhya Nagar, S.O., Nagpur.
Maharashtra -440024.
(Presently at Nagpur Central Prison)

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

RESPONDENTS

- 1] State of Maharashtra,
through Police Station Officer,
Police Station, Hudkeshwar, Nagpur.
- 2] XYZ (Complainant)
in Crime No.0140/2024
P.S. Hudkeshwar, Nagpur.

Mrs. S.P. Chavhan, counsel for appellant.

Mrs. M.A.Barbde, APP for respondent/State.

Mr. B.H. Tekam, counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 05/08/2024

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. Heard finally with the consent of learned counsel
appearing for the parties.

4. By preferring this appeal, the appellant has challenged the order passed by the Special Court under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Nagpur in Criminal Bail Application No. 886/2024.

5. The accusation against the present appellant is on the basis of a report lodged by the victim, aged about 31 years, alleging that she got acquaintance with the present appellant. She was doing work as a beautician. She was called by the present appellant at his house on 24/09/2022, and she was administered some stupefying substance by mixing it in the tea. After drinking tea, she became drowsy, and when she regained consciousness, it was revealed to her that she was subjected for sexual assault. Thereafter, the present appellant promised her for marriage and subjected her for sexual assault time and again, and subsequently, he refused to marry her therefore, she approached the police station and lodged a report.

6. Heard learned counsel for the appellant, she submitted that there was a consensual sexual relationship between the victim and the present appellant, which resulted into her pregnancy. The victim has also obtained the divorce from her husband, but for one or other reasons, marriage was not

performed, and therefore, she has lodged the report. Now, they have already performed the marriage, and the appellant and the victim are residing together. The investigation is also completed and charge-sheet is also filed. In view of that, the appellant be released on bail.

7. Learned APP strongly opposed the said appeal on the ground that merely because the appellant has shown his willingness to perform the marriage with her, it is not sufficient to release the appellant on bail. She submitted that considering the nature of the crime, the application deserves to be rejected.

8. Learned counsel for the victim also submitted that now that they have performed the marriage, there was a consensual relationship, as the marriage was earlier not performed, therefore the victim has lodged the report.

9. After hearing learned counsel for the appellant as well as respondent No.2 and after considering the recitals of the FIR, it reveals that there was a consensual relationship between the victim and the present appellant, which resulted into a physical relationship, and the victim was pregnant. As the appellant has not performed the marriage and therefore, the report was lodged against the appellant. Now, they have already performed the

marriage. The affidavit to that extent is filed on record by the appellant. Here in the present case, considering the peculiar circumstances under which the alleged incident has taken place.

10. As far as the consensual sexual relationship is concerned, it is observed by the Hon'ble Apex Court, in the case of ***Dr. Dhruvaram Murlidhar Sonar vs The State Of Maharashtra, in Criminal Appeal No. 1443 Of 2018, (Arising out of S.L.P (Criminal) No.6532 of 2018) decided on 12/11/2018***, is appropriate and is applicable in the present case. In para -20 of the said judgment which reads thus:

“Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must be 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 malafide

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 Indian Penal Code, 1860”

11. In view of the above, the case for grant of bail is made out by the present appellant. In view of that, appeal deserves to be allowed. Accordingly, I proceed to pass the following order;

- a) The criminal appeal is allowed.
- b) The appellant – Mohit Sanjay Pande, shall be released on bail, in connection with Crime No. 140/2024 registered with Police Station Hudkeshwar, Nagpur for the offences punishable under Sections 376(2)(n) of the Indian Penal Code, 1860; and under Section 3(1)(w)(i)(ii), 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c) The order passed by the Special Court under the Scheduled Caste and Scheduled Tribes

(Prevention of Atrocities) Act, 1989, Nagpur in Criminal Bail Application No. 886/2024 is hereby quashed and set aside.

- d) The appellant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

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

[URMILA JOSHI-PHALKE, J.]