



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

CRIMINAL APPEAL NO.377 OF 2024

Nitin s/o Marotrao Vaidya,
Aged about 31 years,
Occupation : Service,
R/o Shiv Nagar, Ward No. 29,
Near Nag Mandir, Wardha,
Tq. & District Wardha

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
PS. Wardha, District Wardha.
2. XYZ
Through its Complainant,
Crime No.1010/2024,
Police Station Wardha,
District Wardha.

...RESPONDENTS

Mr. M.V Rai, Advocate for the appellant.
Ms S. Dhote, APP for the State.
Mr. G.C. Khond, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : SEPTEMBER 19, 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 (hereinafter referred to as 'the Atrocities Act' for short) challenging the order dated 12/07/2024, whereby the Additional Sessions Judge, Wardha has rejected the anticipatory bail application of the appellant bearing Criminal Bail Application No.292/2024.

3. The appellant is apprehending the arrest at the hands of police, in connection with Crime No. 1010/2024 registered with Police Station Wardha, District Wardha for the offence punishable under Sections 376(1) and 376(2)(n) of the Indian Penal Code, 1860 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.

4. The accusation against the present appellant is on the basis of report lodged by the victim, who is a grown up woman, alleging that she was serving in State Bank of India as a Relationship Executive and she got acquaintance with the present appellant. There was communication between them, and she also roamed along with the appellant at various places. It is alleged that the appellant has expressed his feelings and also promised her for marriage. On the promise of marriage and by expressing that he loves her, he subjected her for sexual

assault. On the basis of the said report, police have registered the crime against the present appellant.

5. Learned Counsel for the appellant submitted that, from the statement of the victim itself and the reply filed by the victim, it reveals that it was a consensual relationship, and she was in a relationship with the present appellant since the year 2019. There was no previous complaint as to the forceful sexual assault. The statement of the victim and the reply filed sufficiently shows that they roamed at various places together, which is sufficient to show that there was a consensual relationship between them. As far as the FIR is concerned, there is no statement that the appellant was knowing that she belongs to the Scheduled Caste and knowingly he developed relationship with her and subjected to sexual assault. Moreover, he submitted that the bar under Section 18-A of the Atrocities Act is not attracted. In view of the interim protection granted to the appellant deserves to be confirmed.

6. Learned APP and learned Counsel for respondent No.2 strongly opposed the said appeal and submitted that there was a false promise of marriage by the appellant and on the false promise, he subjected her for forceful sexual assault. They submitted that on the said promise, the victim roamed along with the present appellant. Subsequently, the appellant denied to perform the marriage with the

victim and duped her. It is further submitted that in view of the bar under Section 18-A of the Atrocities Act, the trial Court has rightly rejected the application and there is no reason to interfere in the said order. In view of that, the appeal deserves to be dismissed.

7. After hearing learned Counsel for the appellant and learned APP for the State as well as the learned Counsel for the respondent No.2 From the perusal of the entire investigation papers it reveals that the FIR is filed by the victim, who is the grown-up lady on an allegation that the appellant has promised her for marriage. On the pretext of false promise, he took her at various places and subjected her for forceful sexual assault. The reply filed by the victim also shows that there was consensual relationship between the victim and the present appellant as the present appellant promised her for marriage.

8. 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 & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P (Criminal) No.6532 Of 2018) decided on 22/11/2018*** 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.”

9. As far as the bar under Section 18-A of the Atrocities Act is concerned, now it is well settled that when *prima facie* case is not made out, the anticipatory bail application is maintainable. In view of the above observation and if the recitals of the FIR and the statement of the victim is considered, it appears that it was the acknowledge consensual physical relationship between the parties, which is not sufficient to constitute an offence under Section 376 of the IPC. As the *prima facie* case is not made out, the interim protection granted to the present appellant deserves to be confirmed. In view of that, I proceed to pass following order;

- (i) The appeal is allowed.
- (ii) The order passed by the Additional Sessions Judge, Wardha in Criminal Bail Application No.292/2024 dated 12/07/2024 rejecting the anticipatory bail application of the appellant is hereby quashed and set aside.
- (iii) In the event of arrest, the appellant - Nitin s/o Marotrao Vaidya in connection with Crime No.1010/2024 registered with Police Station Wardha, District Wardha for the offence punishable under Sections 376(1) and 376(2)(n) of the Indian Penal Code, 1860 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, be released on anticipatory bail on executing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- (iv) The appellant shall attend the concerned police Station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- (v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(vi) The appellant shall attend the proceeding before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

10. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*