



(1)

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

CRIMINAL APPEAL NO.724 OF 2023

Vaibhav s/o Shankarrao Pise,
Aged : 28 Years,
Occu.:- CRPF Constable,
R/o Niljai, Taluka – Warora,
District Chandrapur.
At present : Delhi dadri (National Thermal
Power Corporation)

..... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Wani, District Yavatmal.
2. XYZ (Victim),
Age 22 Years, Occu – Student,
In Crime No.1043/2023
Through Police Station Officer,
Police Station, Wani,
District – Yawatmal.

.... RESPONDENTS

Mr. K. d. Bhende, Advocate for appellant.
Mrs. M. H. Deshmukh, APP for respondent No.1/State.
Ms. Dipali Sahare, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12.01.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

(2)

3. By this appeal, the appellant has challenged the order passed by the Special Court in Criminal Bail Application No.166/2023 on 20.10.2023 by which the application for anticipatory bail is rejected.

4. The crime is registered against the present appellant on the basis of report lodged by the victim alleging that she got acquaintance with the present appellant in a marriage of one relative in April 2021. Thereafter, they had communicated with each other through the mobile phone. The friendship resulted into love relationship. The appellant is working with CISE. On 10.08.2022 appellant came to Wani and called the complainant and went in the hotel. Out of the said love relationship, the appellant promised her for marriage and there was a physical relationship between them on that count. Subsequently, present appellant denied performing marriage with her and therefore, she approached to the police and lodged the report.

5. It is submitted by the learned Counsel for the appellant that the relationship between the present appellant and the victim was for two years. Out of love relationship, they had a physical relationship. The recitals of the FIR nowhere show that the appellant was knowing the victim belongs to the Scheduled Castes or Scheduled Tribes. The recitals of the FIR further nowhere shows that

(3)

she was subjected for the sexual assault as the appellant was knowing she belongs to the particular caste which covers under the Scheduled Caste. The recitals of the FIR shows that there was a consensual relationship between them and out of love affair, they came together and had a physical relationship. Thus, custodial interrogation of the present appellant is not required. Merely, because, there is a breach of promise is not sufficient to attract the provision under Section 376 of the Indian Penal Code. In support his contention he placed reliance on **Shambhu Kharwar Vs. State of Uttar Pradesh and another** reported in **2022 SCC OnLine SC 1032**. He further submitted that as from the recitals of the FIR the offence is not made out under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred as to 'the 1989 Act' for short) under Section 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) and therefore, the application for anticipatory bail is maintainable.

6. In support of his contention, he placed reliance on **Prathvi Raj Chauhan Vs. Union of India and others** reported in **(2020) 4 SCC 727** and submitted that in view of the decisions of the Hon'ble Apex Court, no offence is made out against the present applicant and there is no bar under Section 18A the 1989 Act to entertain the application and therefore, appellant be released on bail, in the event of his arrest, by allowing this appeal.

(4)

7. Learned APP strongly opposed the application and the appeal on the ground that the victim belongs to the Scheduled Caste and the appellant was knowing about the same. He subjected her for sexual assault by promising her for marriage. The bar under Section 18 of the 1989 Act, is attracted. Moreover, there was no free consent for the sexual relationship. The consent is obtained on the promise of marriage, therefore, application for anticipatory bail is not maintainable and learned trial Court has rightly rejected the same. No interference is called for in the order passed by the trial Court.

8. Learned appointed Counsel for the respondent No.2 endorsed the same contention and submitted that there is a bar under Section 18A of the 1989 Act, and therefore, appeal is not maintainable and prays for dismissal of the of the appeal.

9. Having heard learned Counsel for the appellant and learned APP for the State, perused the recitals of the FIR. From the recitals of the FIR, it reveals that the victim has not stated that the appellant was knowing she belongs to the Scheduled Caste. It appears from the recitals of the FIR that, she got acquaintance with the present appellant in the marriage of one of the relative and thereafter, they developed friendship which resulted into the love affair. Admittedly, victim is age of understanding and has attained the age of majority. It further reveals that as there was a promise of

(5)

marriage, there was a physical relationship between them and they visited various places and it continued for two years. However, subsequently, the appellant denied to perform marriage with her. Learned Counsel for the appellant submitted that due to the dispute between them the appellant denied to perform marriage with her. As far as the scope of Section 18 of the 1989 Act are concerned, he submitted that when there is no *prima facie* case found from the allegation in the FIR, the application for anticipatory bail is maintainable. Admittedly, from the recitals of the FIR it appears that, there was a love relationship between them and out of the said love relationship they have developed a physical relationship. Whether the consent was obtained by misconception of the fact or not is to be considered. The Hon'ble Apex Court in the case of **Shambhu Kharwar** (supra) dealt with this issue and held that to establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

10. In the present case, the issue which had to be addressed is whether there was a false promise or not. Admittedly, the

(6)

appellant and the victim were in a consensual relationship for two years. They both are educated and adults. They entered into the relationship with understanding of the consequences of the said relationship. It is well settled that mere breach of promise is not sufficient to attract the provisions. Taking into consideration the allegations in the FIR and the investigation papers, the crucial ingredients of the offence under Section 375 of the Indian Penal Code (IPC), are absent. The relationship between the parties are purely of consensual nature. The relationship as noted above was in existence till filing of the FIR i.e. for two years.

11. As far as bar under Section 18A of the 1989 Act is concerned, now it is well settled that when *prima facie* case is not made out anticipatory bail can be granted in appropriate circumstances. The Hon'ble Apex Court in the case of **Prathvi Raj Chauhan** (supra) by referring to the various judgments held that grant of anticipatory bail under Section 438 of Cr. P. C. is barred in respect of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, however where *prima facie* case not made, anticipatory bail can be granted in appropriate circumstances with a cautious exercise of power. Section 18 and 18A of the 1989 Act have no application where *prima facie* case is not made out.

(7)

However, for evaluating the *prima facie* case reappreciation of the evidence is not required.

12. In the light of the well settled principle laid down by Hon'ble Apex Court, if the facts of the present case are taken into consideration, there is no material to show that the appellant was knowing that victim belongs to the Scheduled Caste and Scheduled Tribes. The relationship between the appellant and victim was developed as they got acquaintance with each other which resulted into the love affair and by consent they had a physical relationship with each other. It is the settled law now that mere breach of promise is not sufficient to attract the provisions under Section 375 of the IPC. Thus, appellant has made out the case for grant of anticipatory bail. The learned Court below has not considered that bar is not attracted and mere promise of marriage is not sufficient to attract the provision i.e. to make out the offence under Section 375 of the IPC. In view of that, appeal deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The order passed by the Special Court in Criminal Bail Application No.166/2023 dated 20.10.2023 is quashed and set aside.

(8)

(iii) The appellant **Vaibhav s/o Shankarrao Pise** be released on anticipatory bail in the event of his arrest in connection with Crime No.1043/2023 registered with Police Station, Wani, District Yavatmal for the offences punishable under Sections 376(2)(n), 417 and 506 of the Indian Penal Code and under Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall attend Police Station as and when required for the investigation purpose and the Investigating Officer shall issue advance notice of seven days to the present appellant to secure his presence.

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

13. The fees of the appointed Counsel for respondent No.2 be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)