



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

CRIMINAL APPEAL NO.734 OF 2023

Pramod s/o Baliram Kherde
Aged about 50 years,
Occupation – Business,
R/o Flat No.202-B, Chintamani Complex,
Besa Road, Nagpur

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Hudkeshwar, Nagpur, District Nagpur
2. XYZ (Victim in Crime No.0561/2023)
through PSO Hudkeshwar, Nagpur

...RESPONDENTS

Mr. S.N. Singh, Advocate a/w Mr. A.M. Chandekar, Advocate for
the appellant.
Mr. N.H. Joshi, APP for respondent No.1/State.
Mr. C.H. Sharma, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JANUARY 02, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for
the parties.

2. Present appeal is preferred against the order passed by the
Special Judge and Additional Sessions Judge, Nagpur in Special Case

No.483/2023 by which the ~~anticipatory~~ bail application of the present appellant in Crime No.561/2023, is rejected.

Corrected as per
Court's order
dated 10/01/2024

3. The appellant is arrested in connection with Crime No.561/2023 registered at police station Hudkeshwar, Nagpur for the offence punishable under Sections 376 and 376(2)(n) read with Section 34 of the Indian Penal Code. Subsequently, as the victim belongs to the scheduled caste, the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short) are applied. Accordingly, Sections 3(1)(w)(i)(ii) and 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are imposed against the present appellant. Since the date of arrest, the appellant is behind bar.

4. Learned Counsel for the appellant submitted that the crime is registered on the basis of report lodged by the victim on an allegation that in the month of May, 2022 she got acquaintance with the co-accused Hemraj Deorao Fulbandhe who asked her to invest the amount in an investment plan and introduced her with the present appellant. She further alleged that the present appellant and other co-accused took her at the house of present appellant and other co-accused. Thereafter present appellant has explained her the investment plan and also offer her cold-drink. Present appellant sent her in a bedroom to

have a cold-drink and thereafter latched the door from the outside. It is alleged that co-accused Raj Fulbandhe who was under the influence of liquor subjected her for forceful sexual intercourse. As per her allegation in June, 2022 she received the message from the present appellant and thereafter they developed the relationship and there was consensual physical relationship between them which resulted into the pregnancy. She has aborted the child. As per her allegation, present appellant has issued her false notice and make false allegations and also denied the relationship with her. 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 the allegation against the present appellant is concerned, the recitals of the FIR shows that by her own consent she had a relationship with the present appellant. There is no forceful sexual assault on her. He further submitted that the reason behind implicating him in the alleged offence is that he was blackmailed by the informant by demanding the money therefore he filed an application before the police station Hudkeshwar prior one month of the incident. As police have not taken any cognizance of the said complaint he issued a notice through the Advocate to the informant and therefore, false report is lodged against him. He further submitted that considering the relationship between her as per the allegation by consent, no offence is committed by the present appellant

and there is no other allegation against him in the FIR. Now, investigation is already completed and charge-sheet is filed. Further incarceration of the present appellant is not required. In view of that he be released on bail.

6. Learned Additional Public Prosecutor strongly opposed the appeal on the ground that considering the nature of the offence that the informant was subjected for sexual assault by the present appellant on the promise of marriage which resulted into the pregnancy and thereafter the present appellant has denied the relationship. Thus, *prima facie* case is made out against the present appellant. In view of that the appeal deserves to be dismissed.

7. Learned Counsel for respondent No.2 endorsed the same contention and submitted that considering the gravity of the offence that the victim is subjected for sexual assault, the appeal deserves to be dismissed.

8. Having heard learned Counsel for the parties. Perused the recitals of the FIR and the investigation papers. From the recitals of the FIR it is crystal clear that as far as the allegation against the present appellant is concerned, she alleged that she got acquaintance with the present appellant through other co-accused Raj Fulbandhe. There was

physical relationship between them by her consent. As far as the contention raised by the learned Additional Public Prosecutor concerned that on the promise of marriage the appellant has subjected her for sexual assault is not raised by her in her FIR. She specifically stated that there was consensual relationship between them and then which resulted into pregnancy but as the appellant has denied any relationship and also disowned the responsibility regarding her pregnancy, she lodged the report. She further stated that the present appellant has filed false complaint against her and also issued a false notice to her, she has filed this report against the present appellant. Thus, considering the allegation against the present appellant shows that there was consensual relationship between them and out of that she carried the pregnancy. The investigation papers and the recitals of the FIR further shows that admittedly present appellant has issued a notice to her prior to one month wherein he has alleged that the present informant is blackmailing him which constrained him to issue a notice. Admittedly, the investigation is already completed. Learned trial Court ought to have considered this aspect. It is pertinent to note that the person against whom the allegation of forceful sexual assault are made is already released on bail. This aspect is not taken into consideration by the trial Court. The trial Court ought to have considered that as per the recitals of the FIR there was a consensual relationship between both of them and

therefore, the application for bail ought to have allowed. The trial Court also ought to have considered that previously the appellant has filed a complaint and also issued a notice which is admitted by the informant.

9. Considering the entire scenario it reveals that there was a physical relationship between the present appellant and the informant which was consensual in nature, except that allegation, no other allegation that the present appellant has subjected her for forceful sexual intercourse is made by the informant. Now investigation is already completed and charge-sheet is filed. Further incarceration of the present appellant is not at all required. In view of that the appeal deserves to be allowed by imposing certain conditions. Hence, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) ~~In the event of arrest,~~ The appellant - Pramod s/o Baliram Kherde in connection with Crime No.561/2023 registered at police station Hudkeshwar, Nagpur for the offence punishable under Sections 376 and 376(2)(n) read with Section 34 of the Indian Penal Code and Sections 3(1)(w)(i)(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 in the sum of

Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iii) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(iv) The appellant shall furnish his Cell phone number and address along with the address proof before the Investigating Officer.

10. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*