



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

CRIMINAL APPEAL NO.801 OF 2023

Maroti s/o Indrapalji Hole @ Manish Selure
Age: 39 yrs, Occ :- Business,
R/o. Near Datta Mandir, Aroli,
Tah. Mouda, Dist:- Nagpur. **APPELLANT**
APPLICANT

...VERSUS...

1. State of Maharashtra through
PS.O. Nandanwan, Nagpur.
2. Victim XYZ in Crime No.230/2023
through PS.O. Nandanwan,
Nagpur. **RESPONDENT**
NON-APPLICANT

Mr. A. G. Hunge, Advocate for Appellant.
Mr. M. J. Khan, APP for Respondent No.1/State.
Mr. Sachin Katarpawar, Advocate for Respondent No.2.

CORAM: **URMILA JOSHI PHALKE, J.**
DATE: **3rd APRIL, 2024.**

ORAL JUDGMENT:

Heard.

2. Admit.

3. By preferring this appeal the appellant has challenged
the order passed by the Additional Sessions Judge-10 and Special

Judge under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Nagpur by which the Special Court has rejected the bail application of the present appellant in Criminal Bail Application No.1813/2023.

4. As per the accusation the victim who is residing with her maternal uncle and mother as she was destitute by her husband prior to ten years and while she went to Aroli to attend the marriage of son of uncle, he got acquaintance with the present applicant. It is further alleged that present applicant contacted her and called her at Kanhan and took her in one lodge and subjected her for sexual assault on the promise of marriage. Thereafter on several occasion the act of sexual was repeated by the present applicant due to which she was pregnant and delivered a child. On the basis of said report police have registered the crime against the present appellant.

5. After registration of the crime the present appellant approached to the Special Court for grant of bail by filing an application bearing Criminal Bail Application No.1813/2023. The Special Court considered the entire investigation papers and observed that the statement of the victim and another evidence

collected during the investigation makes out a *prima facie* case against the present appellant and rejected the bail application.

6. Being aggrieved and dissatisfied with the same present appeal is preferred by the appellant for grant of bail on the ground that the learned trial court has not considered that the victim is grown up lady and the relationship between the present applicant and the victim was consensual. Now investigation is already completed charge-sheet is already filed the further incarceration of the present applicant is not required. In view of that, the appellant requires to be released on bail.

7. The learned APP strongly opposed the said application on the ground that victim is not only subjected for sexual assault on the promise of marriage but the applicant has also threatened her that he would defame her. Moreover, the applicant has suppressed the fact that he is a married person and on the promise of marriage subjected her for sexual assault. If he is released on bail he would tamper with the prosecution evidence. The learned counsel for the victim reiterated the said contention and pressed for rejection of the appeal.

8. After hearing the learned counsel for the appellant and the learned APP for the State, perused the investigation papers the crime is registered on the basis of report lodged by the victim who is 30 years old. As per her statement, she got acquaintance with the present applicant in one marriage of her relative, thereafter there was a communication between them. The present applicant had called her at Kanhan and booked lodge and there was physical relationship between them. It is alleged that the appellant has promised for marriage. Admittedly, whether there was false promise of marriage or it is the breach of promise is a matter of evidence. At this stage, the investigation is completed, charge-sheet is already filed. The DNA report is yet to be received. Considering the fact that there was love affair between the victim and the present appellant and out of that the physical relationship was there, victim is a grown up lady who had consented from sexual assault whether that consent was under the special or is matter on evidence. At this stage, further incarceration of the present appellant is not required. However, considering the apprehension raised by the learned counsel of the respondent which can be taken care of by imposing certain conditions on the appellant. The learned trial court has not considered the fact that there was a love affair and out of love affair the sexual relationship

was there. Considering the same the order passed by the learned Special Court requires to be set aside. The order passed by the learned Special Court is quashed and set aside. In view of that, I proceed to pass following order:

- i) The appeal is allowed.
- ii) The appellant – Maroti s/o Indrapalji Hole @ Manish Selure shall be released on bail in connection with Crime No.230/2023 registered for the offence punishable under Sections 376(2)(n), 417 and 506 of the Indian Penal Code read with Section 3(2)(v)(a), 3(2)(v), 3(i)(w)(i)(ii) of the Prevention of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on executing P.R. bond in the sum of Rs.25,000/- with one surety of like amount.
- iii) The appellant shall not in manner contact the victim and shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

- iv) The appellant shall not enter into the vicinity
i.e. Nandanwan slum area till culmination of
the trial.
- v) The appellant shall attend the dates of
proceedings before the trial Court without
seeking any exemption unless there are
exceptional circumstances.

9. The appeal is disposed of.

JUDGE

NSN