



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

CRIMINAL APPEAL NO.806 OF 2023

Shubham s/o Anil Metangale,
Aged about 23 years,
Occupation – Private,
R/o. Sawargaon, Tah. Narkhed,
District Nagpur (Presently Central
Prison at Nagpur)

...APPELLANT

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Mankapur,
District Nagpur
2. X.Y.Z. (Victim) in
Crime No.312/2023
registered with Police Station
Mankapur, District Nagpur

...RESPONDENTS

Mr. L.B. Khergade, Advocate for the appellant.
Mr. S.S. Hulke, APP for the State.
Mr. A.G. Hunge, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JANUARY 29, 2024.

ORAL JUDGMENT :

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

2. By this appeal, the appellant has challenged the order passed by the Special Court under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 passed in Criminal Bail Application No.2809/2023 by which the application of the appellant is rejected for grant of bail dated 11th December, 2023. The present appeal is preferred by the appellant under Section 14(A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act' for short).

3. The appellant came to be arrested on 10th September, 2023 in connection with Crime No.312 of 2023 registered under Sections 376, 376(2)(j), 376(2)(n) of the Indian Penal Code and Sections 4, 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(w)(i), 3(1),(w)(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. It is alleged by the prosecution that in the year 2020 while victim was studying in 11th standard, she got acquaintance with the present appellant who was also taking education in the same college and friendship was developed between them. Said friendship resulted into the love affair. It is further alleged that the present applicant on the promise of marriage took her at various places and subjected her for

sexual assault. 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 allegations are concerned which are false in nature. The appellant is not at all concerned with the alleged offence. Even for taking into consideration, the allegations as it is, it is apparent that out of love affair they come together and there was a physical relationship. The victim was more than 16 years of age at the time of first incident and was aware about the repercussions of her act. She at her own came along with the appellant and whatever happened is out of the love relationship. Now, investigation is 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 prayer on the ground that the victim is 16 years of age, her consent is not relevant. The recitals of the FIR shows that the appellant has promised her for marriage and subsequently denied to marry with her. The intention of the appellant is since inception, in view of that the appeal deserves to be dismissed.

7. Learned Counsel for respondent No.2 also endorsed the same contentions and submitted that from the investigation papers and the

recitals of the FIR, it is apparent that on the assurance of false promise of marriage she was subjected for sexual assault. The consent of the victim is not relevant. The learned trial Court has rightly considered this aspect and rejected the application. Merely because charge-sheet is filed is not sufficient ground to release the appellant on bail. If appellant is released on bail he will tamper with the prosecution evidence. In view of that the appeal deserves to be dismissed. He further submitted that the order passed by the learned trial Court is reasoned order and no interference is called for.

8. I have heard learned Counsel for the parties. Perused the investigation papers. From the recitals of the FIR, it reveals that there was a love affair between the informant and the present appellant. The said love affair developed as they were studying in the same college. It further reveals that the informant accompanied him at various places and out of love affair there was a physical relationship between them. As far as false promise is concerned, admittedly the consent of the victim is not relevant as she is below 18 years of age, but it is also evident that they come together for the physical relationship out of the love affair. Whether there was a false promise since inception or not is to be gathered from the circumstances. From the statement of the victim itself shows that as there was a love affair she herself joined the company of the present appellant and accompanied him at various places. Out of the

love affair, they come together and out of physical attractions they had a physical relationship. It is now well settled that consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual act. There should be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons are not sufficient to attract the contention that there was intention of the appellant since inception to deceive the victim. From the recitals of the FIR and the investigation papers, it reveals two young persons came together out of the love relationship and had physical relationship. At the most, it can be said that the intention of the appellant can be gathered from the circumstances and if evidence is recorded before the trial Court. At this stage, the investigation is completed and charge-sheet is filed. Considering the circumstances under which the alleged incident of physical relationship took place is out of love affair. Further incarceration of the present appellant is not required and the prayer of

the present appellant for grant of bail can be considered by imposing certain conditions.

9. The learned trial Court has not considered this aspect and rejected the bail application. Learned trial Court ought to have consider that there was a love affair between the victim and the present appellant and the investigation is completed. The basic rule is bail and rejection of bail is an exception. The appellant cannot be sent behind bar by way of punishment. Considering the investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. The appeal deserves to be allowed by granting bail to the appellant by imposing certain conditions. Hence, I proceed to pass following order :

(i) The appeal is allowed.

(ii) The order passed by the trial Court in Criminal Bail Application No.2809/2023 rejecting the bail application of the appellant is hereby quashed and set aside.

(iii) The appellant - Shubham s/o Anil Metangale in connection with Crime No.312 of 2023 registered under Sections 376, 376(2)(j), 376(2)(n) of the Indian Penal Code and Sections 4, 5(l) and 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(w)(i), 3(1),(w)

(ii) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.

(iv) The appellant shall attend concerned Police Station as and when required for the investigation purpose.

(v) 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.

(vi) The appellant shall not in any manner contact the victim and shall not enter into the vicinity of Gajanan Nagar, Sawargaon, Taluka Narkhed, District Nagpur till the culmination of the trial.

10. The appeal is disposed of accordingly.

11. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*