



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

CRIMINAL APPEAL NO. 812 OF 2023

APPELLANT: Rohit s/o Rajendra Sharma,
Aged about 24 years,
Occupation: Private Job,
R/o Mahu Nimach Road, Daloda, (M.P.)

...V E R S U S...

RESPONDENTS 1] State of Maharashtra,
through Police Station Officer,
Police Station, Frezarura, Amravati,
Tah. and District – Amravati.

2] XYZ,
Victim in Cr. No.451/2023 of
Police Station, Frezarura, Amravati,
Tah. and District Amravati.

Mr. PV.Navlani, counsel for the appellant.

Mr. N.R.Rode, APP for the respondent No.1.

Mrs. N.N. Singhanian, counsel (appointed) for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 16/01/2024

ORAL JUDGMENT :

1. Heard. **Admit.**

2. Heard finally with the consent of the learned
counsel appearing for the parties.

3. By preferring this appeal, the appellant has challenged the order passed by the Additional Sessions Judge, Amravati in Criminal Bail Application No.1237/2023 dated 11/10/2023 by which the anticipatory bail application filed by the appellant was rejected.

4. The appellant is apprehending his arrest at the hands of Frezarpura Police Station, District Amravati, for the alleged offences punishable under Sections 376(2)(N), 504, 506, 323 of the Indian Penal Code, 1860 and Section 3(1)(w) (i)(ii), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989') vide crime No.451/2023. The crime is registered on the basis of the report lodged by the victim, on an allegation that she got acquaintance with the appellant through Online Dating App i.e. "OkCupid: Online Dating APP" and they developed the friendship. Out of the love relationship between them, they had a physical relationship with each other. As per the allegation, the applicant has promised her for marriage, and on account of that promise, there was a physical relationship between them and subsequently, he denied to marry with her and therefore, she constrained to leave Amravati and went at her parents house.

5. It is further alleged that the appellant has taken the photographs and video threatened her that he will make it viral. On the basis of the said report, the police have

registered the crime against the present appellant.

6. The learned counsel Shri P.V.Navlani submitted that the appellant and the victim both have completed their graduation. They came into contact with each other and developed the friendship through online dating application “OkCupid: Online Dating APP”. The said friendship resulted into the love affair. As per the allegation, present applicant has promised her for marriage and therefore, there was a physical relationship. He submitted that mere breach of promise is not sufficient to attract the provisions under Section 376 of the Indian Penal Code, 1860.

7. In support of his contention he placed reliance in the case of ***Pramod Suryabhya Pawar vs State of Maharashtra¹*** and ***Shambhau Kharvar vs State of Uttar Pradesh and another²***. He further submitted that recitals of FIR, the provisions of the Atrocities Act are not applicable and therefore, the application for anticipatory bail is maintainable. The bar under Section 18-A is not attracted and prays for releasing the appellant on bail.

8. In support of his contention, he placed reliance on ***Prathvi Raj Chauhan V/s Union of India and others³***, wherein the Hon’ble Apex Court has held that grant of anticipatory bail under Section 438 of Code of Criminal

1 AIR 2019 SC 4010

2 2022 SCC OnLine SC 1032

3 (2020) 4 SCC 727

Procedure is barred in respect of the offence under the Act of 1989. However, where prima-facie case is not made out, anticipatory bail can be granted in appropriate circumstances with a cautious exercise of power. The Section 18 and 18-A of the Act of 1989 have no application where prima-facie not made out. However, for evaluating the prima-facie case, re-appreciation of evidence is not required.

9. Per contra, learned APP strongly opposed the present application on the ground that the consent is obtained under the pretext of promise of marriage and misconception of the fact. The allegation levelled against the present appellant is also that he has obtained some photographs and threatened the victim that he will make the said photographs viral. Therefore, the application for anticipatory bail is not maintainable and therefore, the appeal deserves to be dismissed.

10. The learned counsel for the respondent No.2 reiterated the said contentions and submitted that there are specific allegations against the present appellant which shows that on the promise of marriage, he has subjected her for sexual assault. The complainant was also threatened by the appellant and she has filed the report about the same. Considering the allegation in the FIR, the anticipatory bail is not maintainable and appeal deserves to be dismissed.

11. After hearing the learned counsel for the

appellant, learned APP for the State and counsel for the respondent no.2, perused the recital of the FIR. From the recitals of the FIR, it reveals that the complainant who has completed her education in Engineering and was in search of Job. The appellant is resident of Mansar (Madhya Pradesh) and complainant is resident of Amravati. They got acquaintance with each other through the Online Dating application which is a dating application i.e. 'OkCupid: Online Dating App', and developed the friendship. The recitals of the FIR shows that the appellant has promised her for marriage and therefore, there was a physical relationship between them.

12. Thus, from the recitals of the FIR, it reveals that they developed the consensual relationship and had a physical relation out of the consent. The recitals of the FIR further shows that there was a promise of marriage. Now it is well settled that, merely a breach of promise of marriage is not sufficient to attract the provisions of 376 of the Indian Penal Code, 1860. The Hon'ble Apex Court in the case of ***Pramod Suryabhan Pawar referred (supra)*** wherein it is held that a breach of promise to marry cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it.

13. Moreover, while discussing the expression

consent, it is observed by the Hon'ble Apex Court that this Court has repeatedly held that consent with respect to Section 375 of the Indian Penal Code, 1860, involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions, as well as the various possible consequences flowing from such action or inaction, consents to such action. By referring the judgment of *Sonu @ Shubhash Kumar Vs State of Uttar Pradesh*⁴, it is observed by the Apex Court where the promise to marry is false and the intention of the maker at the time of making promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent", On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act.

14. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned

deliberation towards the proposed act. 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 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.

15. In the present case, the issue which had to be addressed by this Court is misconception of facts. The recitals of the FIR shows that the complainant and the present appellant developed the love relationship and out of that, there was a physical relation between them. In this backdrop and taking the allegations as it is, it reveals that it is a breach of promise to marry. At this stage, it cannot be said to be a false promise and to establish a relation, the maker of the promise should have had no intention of upholding his word at the time of giving it.

16. From the recitals of the FIR, it further reveals that it was a consensual act. The complainant and applicant both are educated, and they entered into the relationship consciously by taking into consideration the consequences of their act. Thus the act which is alleged is by the consent of the victim and it reveals that it was the consensual act.

17. Another aspect whether the bar under Section 18

or 18A of the Act of 1989 attracted have to entertain the application for anticipatory bail. From the recitals of the FIR, nowhere reveals that the applicant was knowing that victim belongs to the scheduled caste and knowingly the applicant has with intention to humiliate or insult, subjected her for sexual assault. The said allegations are absent in the said FIR. Now it is well settled that, there is a bar under section 18-A of the Act of 1989 for grant of anticipatory bail when the offence is committed under the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The Hon'ble Apex Court in the case of ***Prathvi Raj Chauhan vs Union of India and others***⁵ wherein it is held that though grant of anticipatory bail under Section 438 of the Cr.PC. is barred in respect of the offences under the Act of 1989. However, where prima-facie case is not made out, anticipatory bail can be granted in appropriate circumstances. The bar under Section 18 or 18A of the Act of 1989 have no application where the prima-facie case is not made out. It is further observed by the Hon'ble Apex Court that for evaluating the prima facie case, re-appreciation of the evidence is not required. Considering the ratio laid down by the Hon'ble Apex Court, if the facts of the present case are considered, admittedly, there are no recitals that victim belongs to the Scheduled Caste and Scheduled Tribe and the appellant was aware about the same. There is no allegation

that knowingly the appellant has subjected the victim for sexual assault with an intention to humiliate or insult her therefore, the bar under Section 18A is not attracted and the anticipatory bail application is maintainable.

18. The learned trial Court while considering the application has not considered that there was a consensual relationship and both are of a mature age, entered into the relationship through Online Dating Application and knows about the consequences of their act. They both knowingly entered into the relationship and had a physical relation. Therefore, the order passed by the learned trial court requires to be quashed and set aside.

19. Considering the relationship between the appellant and the complainant which is consensual in nature and immediate custodial interrogation of the present applicant is not required. Hence, the application for anticipatory bail deserves to be allowed by imposing certain conditions. Accordingly, I pass the following order :

- a) The criminal appeal is allowed.
- b) The order passed by the learned Additional Sessions Judge, Amravati in Criminal bail application No. 1237/2023 is quashed and set aside.
- c) The applicant is released on bail in the event

of his arrest in Crime No. 451/2023 registered with Police Station Frezarpur, District Amravati for the offences punishable Sections 376(2)(N), 504, 506, 323 of the Indian Penal Code, 1860 and Section 3(1)(w)(i)(ii), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, on executing of P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- d) The applicant shall attend the concerned Police Station as and when required for investigation purpose.
- e) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- f) The fees of the appointed counsel be quantified as per the Rule.

Criminal appeal is **disposed** of accordingly.

[URMILA JOSHI-PHALKE, J.]