



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 185 OF 2025

Altaf Khurshid Jamadar-Shaikh

.. Appellant

Versus

The State Of Maharashtra And others

.. Respondents

Mr. Ganesh J. Kore, Advocate for the Appellant.

Smt. C. C. Kutti, APP for Respondent Nos. 1 and 2.

Mr. Nilesh N. Bhagwat, Advocate for Respondent No. 3.

CORAM : KISHORE C. SANT, J.

DATE : 11th JULY, 2025.

PER COURT :-

. Heard learned advocate for the appellant, learned A.P.P. for the State and learned advocate for respondent No. 2 (appointed).

2. The present appellant has approached this Court seeking his release on bail in connection with Crime No. 237/2024 dated 30.10.2024 registered with Police Station Bembli, Taluka and District Dharashiv. The appellant is an accused in the said crime for the offences punishable under Sections 64 (2) (h), 64 (2) (m), 351(2), 351(3) of the Bhartiya Nyaya Sanhita (for short "B.N.S.") and under Section 3(1)(r), 3(1)(s), 3(1)(w) of the Scheduled

Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short “Atrocities Act”). The prosecution is started on lodging of the information by the respondent No. 3 for the above offences. It is alleged that, the informant was knowing the appellant since 3-4 years. The appellant started telling her that he wanted to marry her. After two years he started to have physical relations under the pretext of getting married. Though the informant was not ready for such relations, he made her believe that he would marry. Because of these relations, she remained pregnant. Her sister and brother in law noticed that she is pregnant. On that, she was examined. It was found that, she was pregnant. When informant told it to the appellant, he told her to abort the child, however, it could not be done. By the time foetus was more than 26 weeks. It is on this, she lodged the complaint. The appellant came to be arrested on the date of FIR itself. Now, charge-sheet is also filed. The appellant thus has approached this Court as his bail application came to be rejected by the learned Sessions Court.

3. The learned advocate for the appellant vehemently argued that, the relationship was consensual relationship. It is clearly seen that, it is the informant who on her own use to go to meet

the accused. Though she stated that, she was not willing to have physical relations, however, it is seen that, under the promise of marriage she gave consent. She even did not make any complaint to anyone in spite of having relations. It is only after her sister noticed that she is pregnant, she made a grievance and before that she had even visited the dispensary to see as to whether child can be aborted. The learned advocate thus submits that, there is no case that there was threat or pressure upon her.

4. The learned A.P.P. vehemently opposes the appeal. She submits that, there are statements of independent persons showing that the accused was seen assaulting the informant on 21.10.2024. A statement of maternal uncle is also recorded. She has also stated against the accused. There is statement of brother in law. She further submits that, DNA sample of foetus was taken. From DNA report now it is confirmed that the appellant is the biological father of the child. She submits that, now it is clear that, it is the accused only who has committed a rape. She thus prays for rejection of the appeal.

5. The learned advocate for respondent No. 3 (appointed) also

vehemently opposes the appeal. He submits that, every physical relation was against the wish of the informant. On every occasion he used force. Under false pretext of marriage he established the relations. There is every possibility of threatening the witnesses and the informant if the appellant is released on bail.

6. After hearing the parties, this Court has gone through the statements recorded by the Police of the witnesses. From the FIR itself it is clearly seen that, for 3-4 years the informant was knowing the accused. Under the pretext of marriage the accused kept relations with her. Though she has stated that, she was opposing such relations, however, it is seen that, she met the appellant on many occasions. Even after she conceived, she did not informed it to any one. It is only after her sister noticed that she has conceived, she reported this fact to her sister. Even thereafter she tried to abort the foetus, however, since it was more than six months, the said could not be done. The statements of the witnesses show that, it is only after it was revealed that there were relations, the informant lodged the complaint. Though DNA report supports the prosecution, it supports only to the extent that

appellant is the biological father of the child. It is the case of the informant herself that she had kept the relations under the pretext of getting married. Looking from this, the DNA report does not assume importance while considering the case. This Court thus finds that, the relations were not under the threat of life of the victim or any person in whom she has interest.

7. Considering the above, this Court is inclined to allow the appeal. Apprehension of respondents can be taken care of by following order.

8. Criminal appeal is allowed. The impugned order passed by the learned Sessions Judge, Osmanabad in Special Case No. 126/2024 dated 24.01.2025 is quashed and set aside.

9. The appellant be released on bail in connection with Crime No. Crime No. 237/2024 dated 30.10.2024 registered with Police Station Bembli for the offences punishable under Sections 64 (2) (h), 64 (2) (m), 351(2), 351(3) of the B.N.S. and under Section 3(1)(r), 3(1)(s), 3(1)(w) of the Atrocities Act on furnishing PR. bond in the sum of Rs. 25,000/- with one solvent surety in the like amount on following conditions :

(i) The appellant shall not try to contact the victim or any of the witnesses and shall not try to pressurize them. If it is found that, he is pressurizing the witnesses or trying to contact the witnesses, his bail shall be liable to be cancelled. He shall co-operate in the investigation. He shall remain present as and when called by the investigating officer.

(ii) The appellant shall give his residential address, mobile number and other contact details with concerned I.O./Police Station.

(iii) The appellant shall not enter Dharashiv District till the trial is over except for attending the trial.

10. With this, criminal appeal stands disposed of.

11. The learned advocate for respondent No. 3 is appointed through legal aid. The Court appreciates his efforts. He shall be entitled to receive the fees as per the rules through Legal Aid Centre.

(KISHORE C. SANT, J.)

P.S.B.