



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

CRIMINAL APPEAL NO. 1035 OF 2024

Sanjay Dadapatil Wakchaure

Age : 44 years, Occu.Nil.

R/o. Pimpalgaon,Nipani.Tq.Akole,

Dist.Ahmednagar

...Appellant

versus

1.The State of Maharashtra

Through Akole Police Station

Tq.Akole,Dist.Ahilyanagar.

2.XYZ

...Respondents

Advocate for Appellant : Mr.V.D.Sapkal Senior Advocate

i/by.Mr.S.R.Sapkal

APP for Respondent Nos. 1 : Mrs. Ashlesha S.Deshmukh

Advocate for Respondent No.2 : Mr. K.N.Shermale

CORAM : SHAILESH P. BRAHME, J.

DATE : 01st APRIL 2025

FINAL ORDER :

1. Heard both sides.

2. Appellant is aggrieved by order dated 28.11.2024 rejecting

his application for pre-arrest bail in respect of C.R. No. 606 of 2024 registered with Akole Police Station, Tq.Akole, Dist. Ahmednagar punishable under Sections 64(2)(f),64(2)(m) of Bhartiya Nyaya Sanhita,2023 and under Sections 3(1)(w)(i)(ii), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act,1989.

3. Appellant was granted protection vide order dated 10.12.2024 by this court. The respondents do not make grievance for breach of the conditions imposed by this Court.

4. The Respondent No.2/informant lodged report on 09.11.2024, that she was divorcee and staying with her mother. She came in contact with the appellant as she was vegetable vendor. She had physical relationship with him on 05.08.2024 and again thereafter on two occasions. There was discord between them and she approached police.

5. Learned Senior Counsel Mr.Sapkal submits that informant was major, divorcee and mother of a child who voluntarily kept relationship with the appellant. The physical relations were consensual without there being any force, misrepresentation or

false promises. Hence, the offence alleged under sections 64(2)(f) and 64(2)(m) of B.N.S,2023 are not attracted. There is unexplained delay in lodging F.I.R. It is submitted that the appellant had paid some amount to the informant and helped her. It is further submitted that she had relationship with Baburao Vishwnath Wakchaure and she had some disputes with him. The conversation between the informant and Baburao Wakchaure was forwarded to the appellant. Baburao was having her photographs in his mobile. It is submitted that interim protection granted earlier needs to be confirmed.

6. Learned APP submits that offence was committed once in a vehicle of the appellant which is yet to be recovered. There is a reference of photographs of the informant in the mobile which is purportedly that of the appellant, that has also not been recovered. The custodial interrogation is required. It is submitted that appellant is taking disadvantage of the feeble condition of the informant.

7. Learned counsel Mr.Shermale appearing for Respondent No.2 supports impugned order. He relies on his affidavit-in-reply.

It is submitted that delay in consensual offence is inconsequential. The allegations against the appellant are very serious and incriminating material is available against him. He adverts my attention to findings recorded in the impugned order in paragraph Nos.14 and 15 to point out that the appellant is not entitled to any protection. It is submitted that totally after-thought theory is projected by giving reference to certificate of a medical practitioner dated 11.11.2024 showing that appellant was under treatment from 09.11.2024. It is submitted that from the whatsapp chat, it is clear that the appellant is involved.

8. Learned counsel Mr.Shermale vehemently submits that appellant's father is influential person. He was *sabhapati* and director of sugar factory. The family of the appellant is involved in illegal mining and offence bearing C.R. No.633 of 2024 was registered against them. The appellant is absconding. Perpetrators of that offence even assaulted Dattatraya Karbhari Gorde who had made complaint against them on 12.12.2024 stating their involvement in illegal mining. It is further submitted that custodial interrogation of the appellant is required. Prima-

facie strong case is made out for offence punishable under sections 64(2)(f),64(2)(m) of B.N.S,2023. Punishment for life imprisonment is provided for the offence under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)Act,1989.

9. I have considered rival submissions of the parties. Informant was major, divorcee and mother of a child. The entire complaint does not spell out any misrepresentation or false promise made by the appellant to her. It speaks about physical contacts between them on three occasions. There are no allegations of force against the appellant. They were knowing each-other. The relations were consensual. Informant had forwarded conversation between herself and one Baburao Wakchaure to the appellant. Apparently, she was interested in continuing the relations with the appellant.

10. The appellant has produced on record whatsapp conversation at Exhibit-D. It is a conversation between informant and Baburao Wakchaure. The reference of mobile and photographs of the informant are not purported to be between

appellant and informant. It was the mobile of Baburao which was having photographs, is the prima-facie impression of this Court. Hence, relying on the conversation, no inference can be drawn against the appellant. The submissions of learned APP that recovery of mobile is yet to be made is misplaced.

11. Learned counsel Mr.Shermale for respondent No.2 has rightly submitted that delay by itself would not be fatal for all the times to come and the criminality would not be evaporated. The proposition of law laid down by Hon'ble Apex Court in **Bhagwan Singh vs. Dilip Kumar @Deepu @Deepak and Another** reported in (2023) 13 SCC 549 is rightly pressed into service. I am not inclined to allow the appeal just because there is delay in filing First Information Report.

12. Appellant's father is stated to be influential person and I have gone through paragraph No.8 of affidavit-in-reply. It also reveals that appellant and his family members are involved in C.R. No. 633 of 2024. They have also indulged in manhandling one Dattatraya Karbhari Gorde. The antecedents of the family of the appellant can not be the solitary ground to deny protection to

the appellant. The physical relationship between the appellant and the informant was consensual without there being any allegations of inducement, force or false promises.

13. The judgment cited by Respondent No.2 in the matter of **Ms.X. vs. The State of Maharashtra and Another** in Criminal Appeals No.822-823 of 2023 is distinguishable on facts. It would be of no assistance to the respondents.

14. I have gone through the judgment of the Supreme Court in the matter of **Sumitha Pradeep vs. Arun Kumar C.K.And Another** reported in (2022) 17 SCC 391 and more specifically it's paragraph No.12. I have already recorded my findings that considering the nature of the allegations, the appellant is entitled to receive the protection. I am not inclined to grant protection just because custodial interrogation of the appellant is not required. Therefore, this judgment can not help the respondents.

15. Though the offence alleged against the appellant is serious in nature attracting life imprisonment, it can not be sole criterion to deny him protection of bail. I find that the findings recorded in

the impugned order are unsustainable and interim protection granted earlier deserves to be continued. I, therefore, pass following order :

ORDER

- a) Criminal Appeal is allowed.
- b) Impugned order dated 28.11.2024 passed by the Additional Sessions Judge, Sangamner in Criminal Bail Application No.362 of 2024 is quashed and set-aside.
- c) Interim protection granted earlier on 10.12.2024 alongwith it's conditions shall be continued till filing of charge-sheet.

[SHAILESH P. BRAHME, J.]

vsj