



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1051 OF 2024
WITH
CRIMINAL APPLICATION NO. 4547 OF 2024
IN CRIMINAL APPEAL NO. 1051 OF 2024

Hardik s/o Hemchandra Soni
Age : 33 years, Occ : Service
R/o : c/o Hemchandra Suresh Soni,
E-2, Brahmani Park, Maharashtra Colony,
Panchvati, Hirawadi Road, Nashik
Adgaon, Nashik.
At present R/o : Quarter No.1/1 Deepnagar,
Ordinance Factory, Bhusawal,
Taluka Bhusawal, District Jalgaon. ... Appellant.

Versus

1. The State of Maharashtra
(Through Taluka Police Station, Bhusawal,
Taluka Bhusawal, District Jalgaon)
2. X Y Z ... Respondent

.....
Mr. Prashant P. Giri, Advocate for the Appellant.
Mr. V. M. Jaware, APP for the Respondent No.1-State.
Mr. Yogesh B. Bolkar, Advocate for Respondent No.2.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.02.2025
Pronounced on : 05.02.2025

ORDER :

1. Criminal Application No. 4547 of 2024 is at the instance of the informant seeking permission to assist learned APP to oppose the appeal for anticipatory bail. For the reasons mentioned in the

application, the applicant/informant is permitted to assist the APP. The application is accordingly disposed of.

2. In instant proceedings prayers are raised for grant of anticipatory bail, i.e. apprehending arrest in crime no. 193 of 2024 registered at Taluka Police Station, Bhusawal, District Jalgaon for offence under Section 376(1), 376(2)(n), 377, 323, 506 r/w 34 of IPC and under Sections 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SCST Act].

3. Taking this Court through the FIR, learned counsel pointed out that informant is a full grown lady who has given her age as 38 years and she also claimed to be married, but a divorcee. He further pointed out that, both were working together in same department at same place and as such, were acquainted with each other since 2019. He pointed out that informant has alleged that love developed between them in the year 2020-21 and on account of promise of marriage, it is alleged that, there were physical relations. However, according to learned counsel, very FIR itself shows that they both shared the same place and had live-in-relationship. He pointed out that, she further claimed that applicant assured to marry her and on said pretext, had sexual relation with her. He pointed out that, at no

point of time there are allegations of being forced upon. That, such allegations are also general and vague without specifying dates of alleged sexual contact. He further pointed out that victim herself is being treated for mood swings and she also has suicidal tendency. That, there is material in the form of WhatsApp exchange about threats to commit suicide. That, she is also of suspicious nature. According to learned counsel, apparently very FIR shows that both were in long standing love relation.

4. Learned counsel pointed out that this Court was pleased to grant interim protection by order dated 05.11.2024. Since then, applicant is co-operating with investigating machinery. There being allegations of retaining personal belongings of informant, the same were also handed over and panchanama to that extent is also effected. He further pointed out that now investigation is over and even chargesheet has been filed. Consequently, he urges for confirmation of interim order dated 05.11.2024.

5. Learned APP, who opposed, would submit that though victim is married and divorcee, there are allegations of initial assurances of performing marriage and on such false assurances, physical relations are maintained. Informant has given detailed report. That, once informant claims that there was physical intimacy without intention

to fulfill the promise of marriage, offence gets attracted. Thus, according to learned APP, coupled with above allegations of committing unnatural offence, as informant belongs to SC category, provisions of SCST Act get attracted and precisely for said reason, learned APP seeks rejection.

6. Learned counsel for informant also opposed on the ground that informant was cheated by giving false promise of marriage and she has been sexually exploited. Her personal belongings are still retained and more over, applicant subsequently indulged in issuing threats. For above reasons, application and prayers are opposed.

7. Heard at length. Perused the papers. At the outset, it needs to be noted that after registration of FIR bearing no. 193 of 2024 dated 11.09.2024, applicant had approached this Court for interim protection on the ground that he is in service and that, there being initial love relations, at later point allegations of commission of rape are levelled. On 05.11.2024, for want of notice and papers, this Court granted interim protection.

8. Now, above order is urged to be confirmed by making it absolute on the ground that investigation is over and chargesheet is already filed. Now all papers are before this Court. Perused the papers

as well as FIR. What can be gathered on going through the FIR is that, informant, who gave her age as 38 years, reported that she works in Thermal Power Station, Deepnagar since 18.04.2022. She has reported that at the time of report, on account of transfer, she was residing at Mumbai. According to her, while she was put up and serving at Deepnagar, Bhusawal in official quarter, she was knowing present applicant since 2019. Then she reported that her previous marriage did not materialize due to ideological differences and divorce was obtained in 2020. Again she reiterated that she got acquainted with present applicant in 2019 itself and acquaintance grew into love affair. According to her, applicant came to know about her divorce and dragging her in love, he agreed to marry her. She stated that he started visiting her quarter and on 05.12.2021, they both together went for outing, returned in the night back to her quarter and promising marriage, he maintained physical relation with her. Then she reported that thereafter, time to time, he developed physical relation with her in the night. That, two years back, she also claims to have handed over her ornaments and personal belongings to him for safe custody and the same are still with him. She also claims to have questioned him time to time about his promise to marry her but he assured that he would have talk with his parents and let her know and subsequently started avoiding such talks. Then she claims

that on **06.06.2024**, when she opened the topic of marriage, she alleges that he beat her and disclosed that whatever assurances he gave till date were false and that he was not going to marry her and that he merely wanted to have nice time with her and even suggested forgetting him, he had no more love for her and that they were mere friends. She reported that, saying so, against her wish, he had unnatural forceful sexual intercourse with her. Then she reported that he also threatened to not to disclose it to anyone or else he would show her obscene photograph to public. Resultantly, she went in depression. He severed relations with her in spite of her efforts to develop contact and hence, she was constrained to lodge above report.

On above report, FIR for above offences seems to have been registered.

9. What is discerned from above detailed FIR is that, informant, a full grown lady and and divorcee, initially claims to have come in contact with applicant by virtue of both being working in same department at same place in the year 2019. She reported about getting divorce in 2020. Her claim is that, when applicant learnt about it, he assured to marry her and he started visiting her place and even staying there. She reported that on promise of marriage, he also

maintained physical relation with her. She has reported such instance to have taken place on 05.12.2021 and thereafter alleged several sexual contacts time to time. She also reported that whenever she questioned him about his assurance to marry, he started avoiding. She has specified instance of 06.06.2024 resulting into quarrel, beating to her and further having unnatural sexual relation with her in her own residential quarter. However, about said episodes of December 2021 and June 2024, report is lodged on 11.09.2024 i.e. after three months of alleged last episode. It does emerge, as submitted by learned counsel, that only when applicant severed his relations and remained discommunicated, above FIR has been lodged.

10. As stated above, initially interim anticipatory bail was granted. Now charge sheet is said to be filed. Learned counsel for informant emphasized that informant's personal belongings are retained by applicant and secondly, that he indulged in issuing threats on 23.09.2024 and the said instance to be reported to Bhusawal Taluka Police Station. In answer, learned counsel made a statement across the bar that articles belonging to informant are already handed over and there is panchanama to that extent. Learned APP has not refuted the same. As regards to threat is concerned, there seems to be a NCR at informant's instance for commission of offence under Section 352

and 351(3) of Bhartiya Nyaya Sanhita [BNS] and police machinery seems to have noted the same under Section 174 of BNS, of which police machinery would do the needful. However, now chargesheet having being filed, for what further purpose applicant's custody is required is not made known to this court either by learned APP or learned counsel representing informant. Learned APP fairly conceded that there is no adverse report from concerned police station about non cooperation in investigation since grant of ad interim anticipatory bail. Therefore, taking overall view of the above aspects, interim order is required to be made absolute. Hence, I proceed to pass the following order :

ORDER

- I. The appeal is allowed.
- II. The interim protection granted by this Court vide order dated 05.11.2024 is hereby confirmed on the same terms and conditions, with further condition that applicant shall not indulge in any act which is prejudicial to the informant, failing which, available course is open to the prosecution.

[ABHAY S. WAGHWASE, J.]