



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

CRIMINAL APPEAL (APEAL) NO.50 OF 2025

Ankit Hukumchand Malviya,

Aged about 36 yrs., Occu.: Service,

R/o. Ward No.2, Kusumkot (BK)

Tq. Dharni, Distt. Amravati.

.... APPELLANT

// V E R S U S //

1. **The State of Maharashtra,**
through Police Station Officer,
Police Station Shegaon,
Tq. Shegaon, Dist. Buldhana

2. **Ku. Nisha Nandlal Kanekar,**
Aged : 30 yrs., Occu.: Service,
R/o. Hardoli, Tq. Dharni,
Distt. Amravati

... RESPONDENTS

Mr M.A. Vaishnav, Advocate for the appellant.

Mr. Anant Ghogare, APP for the State.

Mr. A. Ananthakrishanan, Advocate (appointed) for respondent No.2.

CORAM : URMILA PHALKE JOSHI, J.

DATE : 10.03.2025

ORAL JUDGMENT

1. Heard.

2. **ADMIT.** Taken up for final disposal forthwith by
the consent of learned counsel for the parties.

3. By preferring this appeal, the appellant has challenged the order dated 08.01.2025 passed below Exh.1 in Anticipatory Bail Application No.529/2024 by the learned Additional Sessions Judge, Khamgaon, District Buldhana, by which the application of the present appellant for grant of anticipatory bail is rejected.

4. A Crime bearing No.704/2024 was registered against the present appellant for the offences punishable under Sections 69, 352, 351(3), 351(2) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(2)(v), 3(1)(r)(s), 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SCST Act'). The first information report was lodged by the victim alleging that she got acquainted with the present appellant and thereafter, love relationship was developed between them. On the pretext of promise of marriage, the present appellant established physical relations with her and

subjected her to forcible sexual intercourse. On the basis of the said report, the police have registered the crime against the present appellant. After registration of the crime, he approached the learned Additional Sessions Judge, Khamgaon for grant of anticipatory bail, but the same was rejected. Hence this appeal.

5. Heard learned counsel for the appellant, learned appointed counsel for respondent No.2 and learned APP for the State.

6. Learned counsel for the appellant submitted that though the victim is a married lady, she represented herself as unmarried. He further pointed out from the WhatsApp chats and photographs that there was a love relationship between the appellant and the victim and it also reflects from the WhatsApp chats. Subsequently, this first information report was lodged against the present appellant. He

submitted that physical relation was developed out of consent. As far as custodial interrogation of the appellant is concerned, the same is not required. In view of that, the appellant be protected by granting anticipatory bail.

7. Learned APP and learned Counsel for respondent No.2 strongly opposed for the application and submitted that under misconception of fact that appellant would marry with her, her consent was obtained and thereafter, she was subjected to sexual assault. Therefore, the appeal deserves to be rejected in view of the bar under Section 18-A of the SCST Act.

8. On hearing both the sides and on perusal of the investigation papers, it reveals that the victim and the present appellant got acquainted with each other. Thereafter, love affair was developed between them and out of love affair there was physical relation between them. The photographs

and WhatsApp chats exchanged between them prove that there was love affair between them. The victim, who is a grown-up lady, had physical relation with the appellant out of consent. Whether there is breach of promise or misconception of fact is a matter of trial. At this stage, considering the circumstances under which the relationship was developed and considering the fact that physical relation appears to be mutual, custody of the present appellant is not necessary. The appeal deserves to be allowed. Accordingly I proceed to pass the following order:

(i) The criminal appeal is allowed.

(ii) The appellant **Ankit Hukumchand Malviya**, shall be released on bail in Crime No.704 of 2024, registered with Shegaon City Police Station District: Buldhana for the offences punishable under Sections 69, 352, 351(3), 351(2) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(2)(v), 3(1)(r)(s), 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on executing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one solvent surety in the like amount.

(iii) The appellant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case either physically or telephonically.

(iv) The appellant shall attend the concerned Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. till filing of the charge-sheet.

(v) The appellant shall furnish his detailed address and names and address of his two relatives.

(vi) The order passed by Special Court in anticipatory Bail Application No.529/2024 is hereby quashed and set aside.

(vii) The fees of appointed counsel for the victim be quantified as per rules.

(viii) Hamdast is granted.

The criminal appeal stands disposed of.

(URMILA PHALKE JOSHI, J.)

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