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928.apcal.186.2025

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

CRIMINAL APPEAL NO.186 OF 2025

Pavan s/o Shankar Ghungal
Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Malkapur (City), District Buldhana and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. R. Sharma, Counsel for the appellant.
Ms. Sneha Dhote, APP for the respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/04/2025

1. By preferring this appeal, the appellant has challenged the order passed by the learned Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Malkapur in Criminal (Anticipatory) Bail Application No.51/2025 by which the application of the present appellant for grant of anticipatory bail is rejected.

2. The appellant is arraigned as an accused as the crime is registered on the basis of report lodged by the victim girl aged about 21 years on an allegation that she got acquaintance with the present appellant, and thereafter the present appellant was following her and also obtained the information from her, in which college she is studying, and thereafter, he used to stand in front of the college. In November

2023, he took her in a hotel and subjected her for the forceful sexual assault, and thereafter in September 2024 also, he has forcefully subjected her for sexual assault, and thereafter by obtaining her obscene photographs, he threatened her and blackmailed her. On the basis of the said report, police have registered the crime against the present appellant.

3. Learned Counsel for the appellant submitted that from the WhatsApp chat the nature of the relationship is revealed, which also shows the photographs. Thus, it is apparent that it was a consensual physical relationship between both of them. As far as the immediate custodial interrogation is concerned, which is not required. In view of that, he be protected by granting ad-interim protection.

4. Learned APP strongly opposed for the same and submitted that considering the allegations that the present has obtained her obscene photographs and also threatened her, his custodial interrogation is required.

5. On hearing both the sides and on perusal of the recitals of the FIR and the WhatsApp chat which are placed on record, it reveals that there was a love affair between the victim and the present appellant, out of a love affair, the physical relationship was developed. The photographs which are on the

WhatsApp chat also disclose the nature of the relationship between them. As observed by the Hon'ble Apex Court in the case of **Dr. Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra & Ors. in Criminal Appeal No.1443/2018 (Arising Out Of S.L.P. (Criminal) No.6532 Of 2018)** in para number 20 which reads as under:

"20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC."

6. In view of the above discussion, the immediate custodial interrogation of the present appellant is not required and the appellant has made out a case for grant of ad-interim protection. Accordingly, I proceed to pass following order:

ORDER

(i) In the event of the arrest in connection with Crime No.121/2025 registered with Police Station, Malkapur(City) for the offence punishable under Sections 64, 64(2)(m), 351(1), 352 of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(w)(i), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under Section 66D of the Information Technology Act, the appellant **Pavan s/o Shankar Ghungal** shall be released on ad-interim anticipatory bail, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(ii) The appellant shall attend the concerned Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(iii) The appellant shall not induce threat or promise any witnesses who are acquainted with the facts of the case either physically or through electronic media.

7. Issue notice to the respondent No.2 - victim, returnable after **three weeks**.

8. Respondent No. 2 - victim be intimated through Police Station Officer, Police Station, Malkapur.

9. Stand over after **three weeks**.

(URMILA JOSHI-PHALKE, J.)