



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO.186/2025

Pavan s/o Shankar Ghungal,
Aged about 25 years,
Occupation : Agriculturist,
R/o At Post Ukali, Tah. Telhara,
District Akola

... **APPELLANT**

...VERSUS...

1. State of Maharashtra,
through Police Station Officer,
Police Station, Malkapur (City),
Tah. And District Buldhana.
2. X Y Z (victim in Crime No.121/2025
dated 10.03.2025 registered with
P.S.O. Malkapur (City), Distt.
Buldhana)

... **RESPONDENTS**

Shri C.R. Sharma, Advocate for applicant
Ms Sneha Dhote, APP for respondent No.1
Shri Syed Salman Ali, Advocate (appointed) for respondent No.2

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 12.08.2025

ORAL JUDGMENT

. Heard finally by consent of the parties.

2. Admit.

3. 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.

4. 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.

5. 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 anticipatory bail. He further submitted that after he is released on anticipatory bail, he has co-operated with the investigating agency attended the Police Station.

6. Learned APP and learned Counsel for the complainant strongly opposed for the same on the ground that after present appellant is released on ad-interim anticipatory bail, the attempt was made to tamper the prosecution evidence. In view of that the prayer for grant of anticipatory bail deserves to be rejected.

7. 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."

8. The ground raised by the learned APP and learned Counsel for the complainant that there was an attempt to tamper the prosecution evidence and therefore, the reliance was placed on the affidavit of the victim along with the NC report.

9. On perusal of the NC report, it reveals that it is filed against the unknown person. Thus as far as the allegation that the present appellant has tampered with the prosecution evidence is not substantiated by any material. In view of the

above discussion, as the immediate custodial interrogation of the present appellant is not required and considering the nature of the relationship between both of them before lodging of the FIR, the custodial interrogation of the present appellant is not required. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 24.03.2025 passed by the Special Judge, Malkapur, under the Scheduled Tribes (Prevention of Atrocities) Act in Criminal Bail Application No.51/2025 is quashed and set aside.
- (iii) The appellant **Pavan s/o Shankar Ghungal** shall be released 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, on executing PR Bond in the sum

of Rs.25,000/- with one solvent surety in the like amount.

(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 and shall co-operate with the investigating agency.

(v) 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.

(vi) A single incident of tampering of the witness would lead to the cancellation of bail.

10. The Criminal Appeal is disposed of accordingly.

11. Fees to the appointed Counsel be quantified as per Rules.

(URMILA JOSHI-PHALKE, J.)

R.S. Sahare