

MHCC050001502021



**IN THE COURT OF SESSIONS, AT DINDOSHI
BORIVALI DIVISION), GOREGAON, MUMBAI
BAIL APPLICATION (EXH. 7)
IN
SPECIAL CASE NO. 18 OF 2021
(C.R.NO.1547/2020)
(CNR NO.MHCC05-000150-2021)**

Amol Ashok Pawar

Age – 28 years, Occ : Business,

Residing at : Room No. 503, B Wing, Draupadi Apartment,

Sabegaon, Near Railway Station, Diva East,

District : Thane.

Address of native place : At Post Navadi,

Taluka Patan, District : Satara

.... Applicant/Accused

V/s.

The State of Maharashtra

At the instance of Dahisar

Police Station, Mumbai

....Respondent

Ld. Advocate Mr. Ganesh Chavan for the Applicant/Accused.

Ld. A.P.P. Mr. R. C. Savle for the State.

CORAM: H. H. The Additional Sessions Judge

Shri. Shrikant Y. Bhosale

(C.R.No.9)

DATE : 21st June, 2023

ORDER

The applicant has been arrested on 11.02.2020 by Dahisar police station in connection with C. R. No. 1547/2020 under sections

376(2)(n), 354, 384, 452, 354(D), 509, 323, 500, 504, 506 of the IPC and under section 3(1) (e) (r) (s) (w) (1) (2) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989.

2. The informant has filed say at Exh. 8 and the prosecution has filed his say on the reverse page of Exh. 8. Heard Ld. Adv Ganesh Chavan for the applicant and Ld. APP R. C. Savle for the State. The intervener was absent inspite of repeated call. However, I have gone through her written say Exh. 8.

3. It appears from the material on record that applicant is of Maratha community and the informant from Matang community which is scheduled caste. The applicant and the informant met on Shadi.com on March, 2020 and thereafter, they developed love in between them. The applicant was initially residing at Kurla and the informant at Dahisar. On 08.11.2020 the first information was lodged alleging that the applicant entered in her house on 08.11.2020 at morning hours and abused, assaulted the informant and family members. It is also alleged that the applicant improperly touched the informant. Accordingly the first information was lodged under section 452, 354, 509, 506, 323, 504, 500 of the IPC. Again on 12.11.2020 the informant gave supplementary statement and alleged that she was abused by the accused by referring her caste and therefore, she was humiliated. She also made an allegation that on the basis of false promise of marriage, the applicant established sexual intercourse with her, as such the applicant also committed an offence under section 376(n) of the IPC and the offences under the SCST Act. The investigation machinery have filed charge-sheet on 11.01.2021.

4. This is first bail application of the accused and said is

forwarded through jail authority. According to the Ld. Adv for the applicant there was love affair between the applicant and the informant. But subsequently the informant started raising doubt about the character of the applicant and therefore, there was dispute between them. The sexual intercourse were with consent of both. As such, the intercourse were consensual. The informant and applicant were 28 years old at relevant time. Thus, no offence under section 376 of the IPC can be said to be made out. He further submits that in the first information no allegation of rape or humiliation by referring caste, were mentioned. These allegations are made first time in supplementary statement dated 12.11.2020 i.e. after about four days. Thus, the supplementary statement is after thought. He also submit that the father and the mother of the informant were allegedly present on the spot, but in their original statement they have also not mentioned anything about abasation by referring caste. They being an interested witnesses, their supplementary statements should also be treated as after thought. According to him an independent witness of incidence is secretary of the society by name Gopal Ghadi. In his statement there is no reference to attract the provisions of SCST Act.

5. It is finally submitted that since last two and half years the 376(2)(n), 354, 384, 452, 354(D), 509, 323, 500, 504, 506 applicant is behind the bar. He is poor person and is not having any help from his family members. The applicant is ready to obey the conditions if imposed by the Court. Therefore, it is requested that applicant be released on bail.

6. As against this the Ld. APP submits that the offence under the SCST Act needs to be taken seriously. The applicant had threatened to kill the informant. Not only this, but he also extorted an amount of

Rs. 20,000/- from the informant by threatening her that their obscene photos would be viral. If all these circumstances are considered, no case for bail can be said to be made out.

7. The informant in her written say Exh. 8 has reproduced the allegation and submits that there is every possibility that applicant may kill her if released on bail.

8. After having regards to the facts and circumstances of the present case it is seen that basically there was love affair between the applicant and the informant and the sexual intercourse was consensual. In the first information there was no reference about the commission of rape as well as humiliation of the informant by referring her caste. The said allegations are made in the supplementary statement that too after four days. The independent witness i.e. Gopal Ghadi who is secretary of the housing society was present at the time of incidence and in his statement there is nothing to attract the offence under the SCST Act. His subsequent statement is not recorded, but considering the fact that he was present at the time of incidence and has not referred anything to attract the provision of SCST Act. At this juncture said needs to be believed.

9. Thus, there is good arguable case to the applicant regarding the application of section 376(2), 354(D) of the IPC and the offences under the Scheduled Caste and Scheduled Tribes. The Ld. Adv for the applicant pointed out that in the first information the informant has stated that she had given Rs. 20,000/- to the applicant. Further subsequently she makes an allegation that the applicant extorted the said amount.

10. Apart from the said it is seen that the charge-sheet is filed

& the applicant is in custody since last 2½ years. Considering the pendency of the cases in this Court, there is no possibility that the case can come for hearing in near future. Considering this aspect and considering the observation made in forgoing para, I am of the view that the case for bail is made out.

11. So far as apprehension expressed by the informant is concerned, I think the stringent conditions can be imposed to minimize the apprehension in the mind of the informant. Considering all these aspects following order is passed.

ORDER

1. BA (Exh.7) in Special Case No. 18 of 2021 is hereby allowed and disposed off.

2. The applicant/accused **Amol Ashok Pawar** be released on bail in C. R. No. 1547/2020 registered by Dahisar Police station for the offence punishable under Sections 376(2)(n), 354, 384, 452, 354(D), 509, 323, 500, 504, 506 of The I.P.C. and under section 3(1) (e) (r) (s) (w) (1) (2) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989 on his executing P. R. Bond of Rs. 25,000/- (Rupees Twenty Five Thousand Only) and one or two surety/sureties of like amount and on his accepting following terms and conditions -

- a) He shall provide his identity proof, address proof, mobile phone number with bail papers.
- b) He is directed that he shall not make contact to the informant or her family members by any means and shall keep himself away from them.
- c) He is further directed that he shall not enter into 1 km periphery from the residence and from the working place of the informant.
- d) He shall not tamper the prosecution witnesses in any way.

- e) He shall attend the trial regularly.
- f) The observation made in this order are restricted to this application only and the Trial Court shall not get influenced by the observation of this Court.
- g) This bail order be communicated to jail authority through E-mail.

(The order is dictated in presence of Ld. Advocate for the accused and Ld. APP.).

Date: 21.06.2023

(Shrikant Y. Bhosale)
The Addl. Sessions Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi

Dictated on	: 21.06.2023
Transcribed on	: 21.06.2023
Checked & corrected on	: 22.06.2023
Signed on	: 22.06.2023
Sent to Dept. on	:

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

Date : 22/06/2023

Time : 1.13 P.M.

UPLOAD DATE AND TIME

Ms. Tejal C. Rane

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)

**HHJ Shrikant Y. Bhosale
(Court Room No.9)**

Date of Pronouncement of
JUDGMENT/ORDER

21.06.2023

JUDGMENT/ORDER signed by P.O. on

22.06.2023

JUDGMENT/ORDER uploaded on

22.06.2023