
(2001) 09 JH CK 0009
In the Jharkhand High Court
Case No : B.A. No. 6833 of 2001

Arjun Gupta

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Penal Code, 1860 (IPC) — Section 376

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2001) 09 JH CK 0009

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Advocate : P.P.N. Roy, for the Appellant; APP, for the Respondent

Judgement

V.K. Gupta, C.J.—This is an application for release on bail filed by the petitioner. In Special Case No. 9/2001, the learned 1st Addl. Sessions Judge, Jamshedpur, passed an order on 4.8.2001 rejecting the bail application of the petitioner for the offence u/s 376. IPC and 3/4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. I am mainly concerned with the offence registered u/s 376, IPC, because admittedly on the facts, is a very very good case made out for bail u/s 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. In so far as the allegation made u/s 376, IPC is concerned, the admitted case of the prosecution is that the prosecutrix, Saraswati Kumari Sagar, lodged a written complaint that she and the accused Arjun Gupta, had developed intimacy, relationship and even love affair. On 9.4.2001, when Manju Singh, the head of the family where she was working as maid-servant, was out of Jamshedpur, the accused came inside the house and had sexual intercourse with her. During the course of such sexual intercourse, he promised to her that he would marry her. Thereafter, both the prosecutrix and the accused kept on meeting with each other.

3. It is also the accusation of the prosecutrix that the accused kept promising her about marriage. On that pretext, the accused had sexual intercourse with her. I have come across several cases where similar allegations are made by the prosecutrix against the accused persons. The gravamen and the thrust of the allegations in all such cases is that the accused and the prosecutrix have had sexual intercourse with each other for a long time and on several occasions, presumably on the alleged assurance of the accused that he would marry the prosecutrix and later on, after a sufficiently long gap, when the prosecutrix finds that the accused does not intend marrying the prosecutrix or that his assurances were unfounded or false, she lodges the FIR against the accused, which, in effect and substance, means that during this period, sometimes spanning to over weeks or even months, the prosecutrix did not ever complain. If nothing else, this purely and simply points out to the fact that the prosecutrix was always a consenting party to the sexual intercourse with the accused. If, therefore, the prosecutrix has been a consenting party for all this while (sometimes this period extending to over weeks together and sometimes for months) and lodges the complaint after such a long time, can it be alleged, presumed or even said that the accused has raped the prosecutrix against her will and/or without her consent. In such circumstances and based on these facts, it is not at all difficult to say so. Whenever, therefore, a situation like this comes up before a Court, in such conditions and based on such facts, the courts should have no difficulty in holding that the alleged act was done not without the "consent and against the will of the" prosecutrix. That being the case, therefore, the accused, whenever prays for bail in such a case, deserves to be enlarged on bail.

4. In deciding a bail application u/s 439 of the Code of Criminal Procedure, the High Court or the Court of Sessions has to take into account the basic principle as to whether, on a prima facie reading of the material on record, can it be said that the accused has ex facie committed the offence for which he has been charged. It is the duty of a Court exercising jurisdiction u/s 439 of the Code of Criminal Procedure to take into consideration all such relevant facts which might go to either suggest that the accused might have committed an offence or that apparently and prima facie he does not appear to have committed any such offence.

5. Viewed thus, in a bail application relating to an alleged offence u/s 376, IPC, "consent" of the prosecutrix (provided the prosecutrix is not a minor) is a very important and relevant factor. If all the attendant circumstances and the facts alleged point out that the prosecutrix might have been a consenting party, the Court while considering a bail application might find it very difficult to come to a conclusion that the accused might have committed the offence of rape punishable u/s 376, IPC and on that reckoning, therefore, refusal of bail of such an accused would be a travesty of justice. In other words, if on consideration of material, the Court finds that the prosecutrix was a consenting party all along, not only a consenting party, but an active partner in the act of sexual intercourse for one reason or the other, refusing bail to the accused would be an absolutely

illegal order. After all the gravamen of charge u/s 376, IPC is the accused having sexual intercourse with a woman against her will and without her consent. If this gravamen is missing or is absent in a particular case, based on the facts and circumstances of that case, bail should be always granted. Merely because an allegation carries the label of an offence u/s 376, IPC, bail should not be refused. It is a duty of every Court to dispassionately consider all aspects of the matter and then to decide the issue whether to grant bail or not to grant bail.

6. Viewed thus, an allegation that the prosecutrix was made to have sexual intercourse with the accused on the assumption, based on an assurance or promise or giving out an understanding that the accused would marry her, cannot amount to the lack of consent as far as the prosecutrix is concerned. Prosecutrix, who is a major, if gives consent even on "any of the aforesaid assumptions, and thus has sexual intercourse with an accused will be, under all circumstances and in all respects, considered to be a consenting party. This coupled with the fact that "day after day, week after week and month after month, this arrangement continues until the day of reckoning when she complains that the promise of marriage is not being fulfilled or that all this while she was being fed on this false assurance. What- ever be the worth of the promise or the assurance, in law the prosecutrix is deemed to have given consent as far as the sexual intercourse is concerned. Such consent cannot be called as an illegal consent as far as the applicability of Section 376, IPC is concerned. In such a situation therefore, the accused cannot be deemed to have prima facie committed the offence of rape u/s 376, IPC and thus deserves to be enlarged on bail.

7. For the reasons aforementioned, the order dated 4.8.2001 passed by the 1st Addl. Sessions Judge, Jamshedpur in B.P. No. 9/2001 is set aside and the" petitioner, Arjun Gupta, is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with one surety of the like amount of the satisfaction of the 1st Addl. Sessions Judge, Jamshedpur, in Special Case No. 9/2001, Sidhgora P.S. Case No. 57/2001, G.R. No. 760/ 2001.

8. Let a copy of this order be circulated to all the subordinate courts of the State of Jharkhand for their information, compliance and necessary action.

9. Bail granted.