

(2023) 09 MP CK 0065

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 11347 Of 2023

Kanchan Singh

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 13-09-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(w) (ii), 3(2)(v), 14(A)(2)
Indian Penal Code, 1860 — Section 366, 376 (2)(n)
Code Of Criminal Procedure, 1973 — Section 161, 164, 438(2)

Citation : (2023) 09 MP CK 0065

Hon'ble Judges : Satyendra Kumar Singh, J

Bench : Single Bench

Advocate : Shabnam Bano Khan, APS Tomar, Mohd. Ayub Khan

Final Decision : Allowed/Disposed Of

Judgement

Satyendra Kumar Singh, J

1. Case diary is available.

2. This first criminal appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "Act, 1989") has been filed against the order dated 29/8/2023 passed by the Special Judge (Atrocities), Gwalior in Bail Application No.2413/2023, whereby appellant's application for anticipatory bail has been dismissed.

3. Appellant is apprehending his arrest in connection with Crime No.551/2023 registered at Police Station Thatipur, District Gwalior for commission of offences punishable under Sections 366, 376 (2) (n) of IPC and Sections 3(1)(w) (ii) and 3(2)(v) of the Act, 1989.

4. Prosecution case, in brief is that prosecutrix is a major girl and is pursuing Engineering Course in Maharana Pratap College, Gwalior. About two years' prior to the date of incident, friendship developed between the prosecutrix and the

appellant, who is also his classmate and is studying in the aforesaid college. Thereafter, the appellant told to the prosecutrix that he loves her and wants to solemnize marriage with her, whereafter they both continued to have talks with each other regularly and the prosecutrix also used to visit the appellant on several occasions. About two months' prior to the date of incident, appellant called her in his room and committed forcible sexual intercourse with her on the pretext of marriage. On 8/8/2023 at about 11:00 hours in the morning appellant called the prosecutrix on her mobile phone and asked her to accompany him for a tour, where they would also solemnize the marriage. Thereafter, the prosecutrix went to meet the appellant, who took her to Jammu by a train, where they stayed upto 13/8/2023 in Bhargav Hotel situated near Jammu Station.

In the aforesaid hotel at Jammu also the appellant committed forcible sexual intercourse with the prosecutrix under the pretext of marriage. On 14/8/2023 appellant and the prosecutrix came to Gwalior and they stayed in Bhagwan Hotel at Govindpuri, where again the appellant committed forcible sexual intercourse with the prosecutrix under the pretext of marriage. Thereafter, on 15/8/2023 at about 12:00 hours appellant left the prosecutrix at Kumharpura saying that as she belongs to Chamar caste, therefore, he will not marry with her.

5. Learned counsel for the appellant submits that complainant is a major girl, aged about 19 years. It is apparent that appellant and prosecutrix were friends and she herself went with the appellant on her own will from Gwalior to Jammu and stayed there in a hotel, where alleged incident took place. Thereafter, she further accompanied the appellant upto Gwalior and stayed in a hotel. From the FIR as well as the statements of the prosecutrix recorded during investigation, it is also apparent that after the incident, she accompanied the appellant without making any hue and cry. Admittedly, FIR was lodged after about 3 days of the incident without any plausible explanation. Referring the live-in relationship declaration, it is further submitted by the counsel for the appellant that for about 10 days from 18/7/2023 to 28/7/2023 the prosecutrix lived with the appellant in a live-in relationship. Learned counsel for the appellant further referring certain Whatsapp chats between the appellant and the prosecutrix submits that from 30/7/2023 the prosecutrix started pressurizing the appellant for solemnizing marriage with her and on refusal by the appellant, this false case has

been lodged against him. No offence is made out against the appellant. His custodial interrogation is not required, therefore, the appellant is entitled for anticipatory bail.

6. Learned Public Prosecutor for the State as well as learned counsel for the complainant have opposed the prayer and submit that complainant is a member of SC/ST community and appellant knowing about her caste, on the false pretext of marriage, took her to hotel room and forcefully committed sexual intercourse with her. Offences alleged against the appellant are serious in nature, therefore, he should not be enlarged on bail.

7. Heard the learned counsel for the parties and perused the record.

8. As per prosecution case itself, prosecutrix is major and she herself stated in her statements recorded during investigation that she accompanied the appellant and went to the places of incident. In these circumstances, having considered the rival submissions made by learned counsel for the parties as well as considering prosecutrix's statements recorded during investigation under Sections 161 and 164 of Cr.P.C., so also the delayed FIR and the overall facts and circumstances of the case, without commenting anything on merits of the case, this Court is of the view that the appellant deserves to be enlarged on bail. Therefore, this appeal is allowed and the impugned order dated 29/8/2023 passed by the Special Court is hereby set aside.

8. 1 It is directed that in the event of arrest or surrender of the appellant before Arresting Authority/Investigating Officer in relation to aforementioned crime number, he shall be enlarged on anticipatory bail upon his furnishing a personal bond in the sum of Rs.1,00,000/- (Rupees One Lac only) with one solvent surety in the like amount to the satisfaction of the Arresting Authority/Investigating Officer.

8.2 The appellant shall make himself available for interrogation before the Investigating Officer as and when required and will cooperate in the investigation. He shall further abide by the conditions enumerated in sub-section (2) of Section 438 of the Code of Criminal Procedure.

8.3 It is made clear that the observations made in this order shall not affect the further proceeding of the Court below.

8.4 This Appeal stands allowed and disposed of.

8.5 Certified copy as per rules.