



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 3RD DAY OF AUGUST 2023 / 12TH SRAVANA, 1945

CRL.A NO. 282 OF 2023

AGAINST THE ORDER in CRMC 7/2023 OF DISTRICT COURT &

SESSIONS COURT, ERNAKULAM

SPECIAL JUDGE, SC/ST (PREVENTION OF ATROCITIES) ACT -

CRL.MATTERS

APPELLANT/ACCUSED:

DEEPAK K. BALAKRISHNAN,
AGED 22 YEARS,
S/O BALAKRISHNAN, PAULS APARTMENT KARUVATH HOUSE,
ELAMAKKARA P O, KOCHI - 682026.

BY ADVS.

S.RAJEEV

V.VINAY

M.S.ANEER

SARATH K.P.

PRERITH PHILIP JOSEPH

ANILKUMAR C.R.

RESPONDENTS/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031.
- 2 THE DEPUTY SUPERINTENDENT OF POLICE PUTHENCRUZ
(CRIME NO. 660/2022 OF RAMAMANGALAM POLICE
STATION, ERNAKULAM DISTRICT, PIN - 686663.
- 3 X
X
M P PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
25.07.2023, THE COURT ON 03.08.2023 DELIVERED THE FOLLOWING:



A. BADHARUDEEN, J.

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CrI.Appeal No.282 of 2023
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Dated this the 3rd day of August, 2023

O R D E R

This is an appeal filed under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act' for short), challenging the order dismissing CRMC.No.7/2023 by the Special Judge, SC/ST Special Court, Ernakulam (Sessions Court) as per order dated 16.02.2023. The appellant is the sole accused in Crime No.660/2022 of Ramamangalam Police Station, Palakkad, where the accused alleged to have committed offences punishable under



Sections 354(A)(1)(i), 506, 376(2)(n) of Indian Penal Code ('IPC' for short) and Section 3(2)(v) of the SC/ST Act.

2. Heard the learned counsel for the appellant as well as the learned Public Prosecutor.

3. Though notice mandated under Section 15A(3) of the SC/ST Act was issued to the defacto complainant with direction to appear before this Court to submit her version, as mandated under Section 15A(5) of the SC/ST Act, the defacto complainant did not appear.

4. The case of the prosecution is that the accused, who does not belong to Scheduled Caste or Scheduled Tribe community, committed rape against the defacto complainant, who is a member of a Scheduled Caste community, at 1.30 p.m on 18.11.2022 after giving some liquid to the defacto complainant at MGM Polytechnic Engineering College, Pambakkuda. The further allegation is that in between 18.11.2022 and 07.12.2022, the accused herein threatened



and committed rape against her on many occasions. This is the base on which the prosecution alleges commission of offences punishable under Sections 354(A)(1)(i), 506, 376(2)(n) of Indian Penal Code ('IPC' for short) and Section 3(2)(v) of the SC/ST Act. The learned counsel for the appellant submitted that the defacto complainant as well as the appellant while studying at MGM College generated a love affair and later the relationship was strained. At this juncture, the defacto complainant lodged false complaint alleging commission of rape and therefore the entire allegations are false. In view of the matter, there is no reason to hold that there is *prima facie* case in this matter and as such the appellant is entitled to get anticipatory bail and the bar under Section 18 and 18A has no application in the present case.

5. As I have already pointed out, the defato complainant did not appear to submit her version.

6. While opposing grant of anticipatory bail to the



petitioner, the learned Public Prosecutor vehemently argued that even if there is love affair between the defacto complainant and the appellant, the appellant had given noxious liquid to the defacto complainant and made her in semi conscious condition, to avoid her resistance and thereafter she was subjected to sexual intercourse, against her will and therefore, *prima facie* the allegations are well made out. In such a case, anticipatory bail cannot be granted, in view of the specific bar under Section 18A of the SC/ST Act.

7. The learned counsel for the appellant has placed a decision of this Court reported in [2022 KHC 1001 : 2023 (2) KHC SN 13 : 2022 KHC OnLine 1001 : 2022 LiveLaw (Ker) 650 : 2022 KER 71645 : 2023 (1) KLT SN 27 : 2022 (6) KLT OnLine 1063], ***XXXX v. State of Kerala***, wherein this Court considered the law regarding grant of anticipatory bail in cases involving offences under the SC/ST Act in view of the bar under Sections 18 and 18A



of the SC/ST Act. This Court held relying on the decision of the Apex Court reported in [2020 (2) KHC 423 : AIR 2020 SC 1036 : (2020) 4 SCC 727 : MANU/SC/0157/2020], ***Prathvi Raj Chauhan v. Union of India(UOI) & Ors.*** that in cases where there is no *prima facie* case, grant of anticipatory bail is not specifically barred and when there is *prima facie* case, grant of anticipatory bail is specifically barred. The learned counsel for the appellant placed decision in ***Prathvi Raj Chauhan v. Union of India(UOI) & Ors.*** (*supra*) also to appraise the legal position. Apart from that it is also pointed out that voluntary consent or consent under misconception of fact and false promise is not a fact within the meaning of the Penal Code replacing the same as misconception of fact. Decision of the Apex Court reported in [2003 KHC 943 : 2003 (4) SCC 46 : AIR 2003 SC 1639 : JT 2003 (2) SC 243 : 2003 SCC (Cri) 775 : 2003 CriLJ 1539], ***Uday v. State of Karnataka*** has been also pointed out in this regard. It is also pointed out by the



learned counsel for the appellant that 'bail is the rule' presuming innocence of the accused. In this connection, the learned counsel for the appellant placed a decision of the Apex Court reported in [2022 ICO 1029], *Satender Kumar Antil v. Central Bureau of Investigation & Ors.* Similarly it is argued by the learned counsel for the appellant that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to conceive her to engage in sexual relation is misconception of fact that vitiates the woman's consent. On the other hand, a breach of promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The consent of a woman under Section 375 is vitiated on the ground of misconception of fact where such misconception was the basis for her choosing to engage in the said act. In this decision the Apex Court considered the



decision in [(2013) 7 SCC 675], ***Deepak Gulati v. State of Haryana*** and observed as under:

“21. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the Accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. 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 misrepresentation made to her by the 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 so. Such cases must be treated differently.”

8. In this decision the Apex Court held that in order to establish whether the consent was vitiated by a misconception of fact arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.



9. In so far as the law governing grant of anticipatory bail, the cases involving offence/offences under the SC/ST Act, no doubt, Section 18 and 18A are riders. But as rightly held by the Apex Court in *Prathvi Raj Chauhan v. Union of India(UOI) & Ors. (supra)* when the prosecution materials would establish *prima facie* the offences alleged under the Act, anticipatory bail cannot be granted and in cases where the materials are *prima facie* insufficient to constitute an offence under the SC/ST Act, anticipatory bail is liable to be granted. Going by the prosecution records the case of the defacto complainant is that she was in love affair with the accused, a senior student of MGM college. While so, at 1.30 p.m on 18.11.2022, the accused called her in her telephone and directed her to reach the library. When she reached the library, it was found that all friends were engaged in consumption of alcohol and use of tobacco substances. The defacto complainant also was asked to smoke and the defacto



complainant refused to do so. Later, the accused forcefully given a cake to the defacto complainant and given a bottle of water. Then the defacto complainant felt that her eye sight was diminishing and she reached a semi unconscious stage. Thereafter, the accused brought her to the second or third floor of the college and subjected her to rape. Later, the accused continued telephone calls as usual. The defacto complainant demanded the accused to reach the room of the accused on 30.12.2022 and the defacto complainant did not obey the same, the accused refrained from continuing their love relationship. In this matter, FIS was recorded on 30.12.2022 and crime was registered alleging commission of the offences.

10. In this case, the learned counsel for the appellant placed a compact disc containing the telephonic conversation between the defacto complainant and the accused during the relevant period and also produced the extract of the same to appraise that a cordial relationship between them had been ruined by the defacto



complainant raising false allegations against the accused and foisted this case.

11. Going by the telephonic conversations also, though cordial relationship could be seen, the occurrence as narrated by the defacto complainant in the matter of sexual abuse could be foreseen.

12. In this case the specific case of the defacto complainant is that she was subjected to rape after giving her a cake and a bottle of water by the accused and later she felt that her eye sight was diminishing and when she was at a semi conscious stage. In such a case, it cannot be held that the overt act alleged by the defacto complainant is one arose out of consent. Therefore, the prosecution allegations are well made out *prima facie* and as such anticipatory bail cannot be granted in view of the specific bar under Section 18 and 18A of the SC/ST Act. The learned Special Judge rightly appreciated the materials and found that the appellant did not



deserve anticipatory bail and the impugned order does not require interference in view of the above discussions.

Therefore, the appeal must fail and is accordingly dismissed.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

**APPENDIX OF CRL.A 282/2023**

APPELLANT'S ANNEXURES

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| ANNEXURE I | COPY OF THE FIR ALONG WITH FIS IN CRIME NO.660/2022 OF RAMAMANGALAM POLICE STATION. |
| ANNEXURE II | MEDICAL RECORDS OF THE APPELLANT. |
| ANNEXURE III | TRUE COPY OF THE VOICE CLIP OF THE WHATSAPP MESSAGE DT.21.10.22. |
| ANNEXURE III (a) | A TRUE COPY OF THE TRANSCRIPT OF THE VOICE CLIP OF WHATSAPP MESSAGE DT.21.10.2022. |
| ANNEXURE IV | A TRUE COPY OF THE RECORDING OF THE PHONE CALLS DT.27.12.2022. |
| ANNEXURE IV (a) | TRUE COPY OF THE TRANSCRIPT OF THE RECORDING OF THE PHONE CALLS DT.27.12.2022. |
| ANNEXURE-V | A TRUE COPY OF THE RECORDING OF THE PHONE CALL DT.28.12.2022. |
| ANNEXURE-V (a) | A TRUE COPY OF THE TRANSCRIPT OF THE RECORDING OF THE PHONE CALL DT.28.12.2022. |
| ANNEXURE-VI | A TRUE COPY OF THE RECORDING OF THE PHONE CALL DT.9.3.2023 AT 4.16 PM. |
| ANNEXURE-VI (A) | A TRUE COPY OF THE TRANSCRIPT OF THE RECORDING OF THE PHONE CALL DT.9.3.23 AT 4.16 PM. |