

**Order Below Exh.1 in Cri. Bail Appln. No. 331/2022**  
( CNR No. MHNS-010010692022 )  
**Gautam @ Gulshan Lalit Parakh Vs. State**

**Heard:** Ld. Adv. Mr. I.R. Rayate for the applicant.  
Ld. A.P.P. Ms. S. S. Sangle for the State.  
Perused the say filed by the complainant.

1] This is an application by accused No. 1 under section 439 of Criminal Procedure Code in Crime No.28/2022 registered at Ghoti Police Station, Nashik for the offence under Sections 354, 376, 377, 323, 504, 506 & r/w S. 34 of the Indian Penal Code, 1860 (I.P.C.) and Secs. 3(1)(r)&(s), 3(1)(w)(i)& (ii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Atrocities Act). The offence was initially registered at Upnagar Police Station (as 'zero' C.R.) and later transferred to Ghoti Police Station. It is the case of prosecution in brief that the accused No. 1 and the victim were introduced to each-other on Instagram. Thereafter, they started dating each-other. Both of them are married and living with their respective spouses and children. Accused No. 1 committed forcible intercourse with the victim on the false promise of marriage on several occasions and also committed anal sexual intercourse with her. On one occasion, the family members [brother and uncle] of accused No. 1 verbally abused her and physically assaulted her by manhandling and also told her, "Should we make a lower caste person from a *Mahar* caste like you a daughter-in-law of this family?" Initially, the husband of the victim lodged an N.C. and

the FIR came to be lodged much later. Several days thereafter, the provisions of the Atrocities Act came to be added.

2] Ld. Advocate for the applicants has submitted that the FIR is nothing but a gross misuse and abuse of the provisions of law, in as much as the complainant and the applicant were well-aware of each-other's marital status. The relationship was fully consensual. The applicant and his family members have been falsely implicated to arm-twist the applicant. There is gross and unexplained delay of almost 20 days in lodging FIR. The incident is dated 18/01/2022, whereas the FIR is dated 07/02/2022. The FIR is tainted which can be seen from the fact that in the N. C. lodged by the husband of the complainant, there is no whisper of any allegation under the Atrocities Act. The provisions of the Atrocities Act were added much later purely with a view to harass the accused persons. Even now, the only allegation under the Atrocities Act is that the family members of the applicant told the victim that "Should we make a lower caste person from a *Mahar* caste like you a daughter-in-law of this family?" Moreover, the said words were allegedly not spoken in public view. It is a well-settled legal position that it is only when independent witnesses notice the incident that it can be stated to be in public view. The family members of the applicant did not even know the caste of the victim. There is no averment in the FIR also that the said family members knew the caste of the victim. There is no caste-based insult or abuse even allegedly hurled on the victim by them. Perusal of the FIR indicates that the FIR is tainted and wrecks with *malafides* and even allegedly there is only mere utterance of the caste of the victim which is not in public view. Material

part of the investigation is over and charge-sheet is about to be filed. The applicant resides in a different city. Therefore, there is no possibility of tampering with the prosecution witnesses. He has submitted that in the case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra and another (Criminal Appeal No. 1165 of 2019 (SLP (Cri) No. 2712 of 2019) decided on 21<sup>st</sup> August, 2019**, with identical facts, it was held by the Hon'ble Apex Court that even if the facts set out in the complainant's statement are accepted in totality, no offence under Section 375 of the IPC has occurred.

3] Per contra, Ld. A.P.P. has opposed the bail application on the ground that there is *prima-facie* case against the applicant. Offence is serious in nature wherein even anal sexual intercourse has been committed by the applicant.

4] In order to buttress her contentions further, she has relied on the citation in the case of **Gourav Narendra Singh Vs. State of Maharashtra, 2021 (3) AIR Bom.R (Cri) 740**. In this matter it was held that merely because of delay in lodging FIR, the testimony of the prosecutrix and her grand-father cannot be disbelieved. Conviction was held to be proper.

5] I have heard both the Ld. Advocates at length and have perused the case diary. Following are the admitted facts :

- i) There is a delay of almost 20 days in lodging FIR.
- ii) The N.C. lodged about the incident does not contain any allegation under the Atrocities Act.
- iii) The provisions of the Atrocities Act were added much later after the FIR was registered.

6] It is the own case of the victim was a major and that she was in a consensual relationship with the accused (albeit on the promise of marriage). She is married and also has a child. It is also reflected from perusal of the FIR that the victim was aware of the marital status of the accused No.1. Citation in the case of **Gourav** (supra) will not be applicable to the facts of the present case. The case of **Gourav** (supra) dealt with conviction after trial wherein the victim's own cousin had raped her. The case at hand pertains to granting bail when the investigation is almost over and is a case of consensual relationship. Citation in the case of **Pramod** (supra) will be squarely applicant to the facts of the present case. Material part of the investigation is over. Applicant is ready to comply with the terms and conditions imposed by the Court. In view of the foregoing discussion, I am inclined to allow the application subject to the following terms and conditions.

### ORDER

- 1] The application is hereby allowed.
- 2] Applicant Gautam @ Gulshan Lalit Parakh be released on bail by executing P.R. and S.B. of ₹30,000/- with one or two local sureties of like amount.
- 3] Applicant shall not directly or indirectly, make any inducement, threat or promises to any person acquainted with the facts of accusation, so as to dissuade him/her from disclosing such facts to the Court or to the police officer and shall not tamper with the prosecution evidence in any manner.

- 4] Applicant shall not commit any offence.
- 5] Applicant is duty bound to inform the I.O. and the court about his change of address, if any.
- 6] Applicant shall furnish residence and ID proof of two blood relatives to the I. O.

Nashik  
01/04/2022

Mridula Bhatia  
District Judge-2 and  
Addl. Sessions Judge Nashik.