

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 379 OF 2022

Illahi @ Illu s/o. Abdulla Shaikh. .. Appellant.

V/s.

State of Maharashtra & another. ..Respondents

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Mr.G.L.Deshpande, Advocate for the appellant
Mr.S.D.Ghayal, APP for the respondent-State
Mr.M.B.Sandanshiv, Advocate for respondent no.2.

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**CORAM : C.V. BHADANG &
S.G.DIGE, JJ.**

DATE : 6 JUNE 2022

P.C. :

1. By this Appeal, the appellant is challenging the order dated 11th May, 2022, passed by the learned Special Court, Latur in Crime No. 140/2022 of AUSA Police Station, District Latur, thereby refusing to release the appellant on bail.

2. The appellant is one of the co-accused in the aforesaid offence registered under Section 376, 323, 504 r/w.34 of the Indian Penal Code and Section 3 (2) (va) of

the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. We have heard the learned counsel for the appellant, learned APP as well as learned counsel for the 2nd respondent.

4. The prosecutrix, who is a married lady, was residing along with her husband in the field of the appellant. The husband of the prosecutrix was working as labourer with the appellant. She had requested the appellant to give wages of her husband to her, as her husband was frittering away the amount on his vices.

5. The material allegation is that on 09.04.2022, in the night, her husband along with present appellant and his brother had a party in which they consumed liquor, subsequent to this, prosecutrix claimed that her husband, who is co-accused, had asked her to have sexual intercourse with the appellant. After this, the appellant is alleged to have entered the room and in spite of resistance from the prosecutrix had forcibly sexual intercourse with her. The matter was reported to the police on 13.04.2022 upon which offence came to be registered and investigation is stated to be in progress.

6. During the course of investigation, the statement of the prosecutrix was recorded under Section 164 of the Criminal Procedure Code before the learned Magistrate in which the prosecutrix claimed that the complaint was outcome of some misconception. Similar reply was filed by the prosecutrix before the learned Special Court. In consequence of the same, learned counsel for the 2nd respondent has not opposed the bail. However, the learned APP submits that the prosecutrix in the statement under Section 161 of Criminal Procedure Code has stated about her sexual abuse. It transpired during the course of hearing that the husband of the appellant, who is one of the co-accused, has been released on bail by the learned Special Court. Be that as it may, *prima facie* having regard to the statement made by the prosecutrix under Section 164 of the Criminal Procedure Code, we find that discretion can be exercised in favour of the appellant subject to certain condition. Hence the following order :

ORDER

- (i) Appeal is allowed. The appellant be released on bail on executing a P.R. bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

(ii) The appellant shall co-operate with the investigating agency.

(iii) The appellant shall not directly or indirectly make any attempt to contact the first informant or any other prosecution witnesses and shall not otherwise tamper with the prosecution evidence.

(iv) In the event of breach, the bail is liable to be cancelled.

(v) Bail bonds before the learned Special Court.

S.G.DIGE, J.

C.V. BHADANG, J.

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