

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

CRIMINAL APPEAL NO. 443 OF 2022

Govind @ Anna S/o Khandu Mokate,	]	
Age : 49 Years, Occupation : Business	]	
R/o. Imampur (Jeur),	]	
Tq. & Dist. Ahmednagar.	]	... Appellant.

Versus

1. The State of Maharashtra,	]	
Through its Police Inspector,	]	
City Police Station, Tophakhana,	]	
Ahmednagar.	]	
2. XYZ	]	... Respondents.

...

Mr. S. S. Thombre, Advocate for Appellant.

Mr. M. M. Nerlikar, APP for the Respondent No.1 – State.

Mr. V. H. Dighe, Advocate for Respondent No.2.

**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 5th SEPTEMBER, 2022.

PRONOUNCED ON : 28th SEPTEMBER, 2022.

ORDER :

1. Present appeal has been filed under section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “SCST Act”), challenging the order dated 10th June 2022 passed by the learned Additional Sessions, Ahmednagar, thereby dismissing the application under section 439 of the Code of Criminal Procedure, vide Criminal Bail Application No. 847 of 2022.

2. Heard learned Advocate Mr. S. S. Thombre for appellant, learned APP Mr. A. M. Phule for State and learned Advocate Mr. V. H. Dighe for Respondent No.2.

3. Learned Advocate for appellant has submitted that on the basis of the F.I.R. lodged by respondent No.2 registered with Tophakhana Police Station, District Ahmednagar for the offences punishable under sections 376 and 506 of Indian Penal Code and section 3(1)(w)(i), 3(2)(va) of SCST Act, the appellant came to be arrested on 26th April 2022 and since 30th April 2022 he is in magisterial custody. If we consider the contents of F.I.R., then it can be certainly said that it was the consensual sex by the appellant and the informant. She has stated that such relationship was going on since 1st January 2018 and she has lodged F.I.R. on 4th December 2021. Though she has stated that the acts of the appellant by putting her in fear and by harassing her he used to come to her house, yet it appears that it is an afterthought story. She states that even the appellant had got his massage done through the husband of the informant. She has now tried to paint a picture that putting her in constant fear, the appellant has established physical relationship, but it is in fact a consensual act. In fact, appellant is in the political field as well as social field. He was former member of Panchayat Samit, Ahmednagar. He comes from a reputed family, but whatever relationship he had with the informant was by consent. He also submitted that now the investigation is over and

charge-sheet is filed and even if we consider the entire charge-sheet, the medical evidence is not supporting the prosecution. Another fact that is required to be noted is that the informant says that she has made video of the intimate act between her and the accused, which is unbelievable and even if we take it as it is, yet it was by consent. There is no question of harassing the informant on the ground that she is a member of scheduled caste when everything is by consent. The further physical custody of the appellant is not required and, therefore, he deserves to be released on bail.

4. Learned Advocate for the appellant has relied on the decision in ***Ansaar Mohammad Vs. The State of Rajasthan and Anr.***; 2022 LiveLaw (SC) 599, wherein it has been observed that when the allegations are made regarding the offence of committed repeated rape on same woman and the complainant has willingly been staying with the appellant and had the relationship; then when now if the relationship is not working out, the same cannot be a ground for lodging an F.I.R. for the offence under section 376(2) (n) of Indian Penal Code.

5. Per contra, learned A.P.P. as well as learned Advocate for respondent No.2 strongly opposed the appeal and submitted that the present informant was not even knowing the appellant prior to 2018. She had received a friend request on her facebook account by the appellant in 2018. She has specifically stated that she has not accepted his friend request since

she was not knowing him. Thereafter, continuously the appellant was insisting her to accept and give reply to his posts. According to her, she had never sent any reply nor message to the appellant. The things, thereafter, started in May/June 2021 and then on one day she received phone call stating that it is the phone call from the appellant. Thereafter, that person had come for the massage to the husband of the informant. She has given in detail as to how the things progressed and how the appellant was harassing her. He has established physical relationship with her forcibly and giving threats to kill her family. Ultimately, she has made the video recording of the incident that had taken place on 20th November 2021. Whatever she has stated in the F.I.R. has been supported by her statement under section 164 of Cr.P.C. As regards, medical evidence is concerned, the explanation would be given. There is statement of the husband of the informant and also the statement of other witnesses. The video has been submitted by the informant to the police. When there is ample evidence against the appellant, he should not be released on bail as there is danger to the life of the informant taking into consideration the social status of the appellant and his conduct.

6. At the outset, it is to be noted that the observations in ***Ansaar Mohammad (Supra)*** are not applicable to the facts of this case. In that case, the informant was willingly staying with the appellant and had relationship. This is not the case here. The other case that has been relied by the applicant

is *Shambhu Kharwar Vs. State of Uttar Pradesh and Ors.* reported in *MANU/SC/1011/2022*. However it is to be noted that it was the criminal appeal challenging the disposal of the application under section 482 of the Code of Criminal Procedure. The parameters are definitely different. No doubt in that case also the appellant was prosecuted for the offence punishable under section 376 of Indian Penal Code. But in that case also, it appears that the informant in her F.I.R. itself permitted that she was having affair with the appellant. When the present informant is not accepting that she had any affair with appellant, it cannot be so insisted by the appellant at this stage. Further, the F.I.R. does not say that the physical relationship was from 2018 to 2021. Rather she says, from 2018 to 2021 though the appellant was giving obscene messages post on her facebook account, she had not replied them. It then started in May/June of 2021, when she received a phone call. Therefore, the picture that was tried to be painted on behalf of appellant that since 2018 the appellant is in relationship with the informant appears to be wrong. The contents of F.I.R. are supported by her statement under section 164 of Cr.P.C. and also it is stated that there is video recording. The transcript of video recording has been given and it also states that there was some willing act on the part of the informant while having sexual intercourse. Now, the informant is explaining that she has intentionally behaved in that passion and collected the evidence to show as to how the appellant is behaving with her. Under such circumstance, when there is evidence against the appellant

and the informant/respondent no.2 is categorically saying that she had not given consent, this cannot be taken as a fit case where the appellant should be released on bail. Taking into consideration the contents of the F.I.R., harassment to the informant and her family members by the appellant cannot be ruled out.

7. The learned Special Judge, Ahmednagar was justified in rejecting the bail application filed by the appellant. There is no merit in the appeal. It deserves to be dismissed. Accordingly it is dismissed.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)