

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

CRIMINAL APPEAL NO. 739 OF 2022

Bhagwan Pandurang Ibite

..APPELLANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....
Mr. A.D. Hande, Advocate for appellant

Mr. R.B. Bagul, A.P.P. for respondent no.1 – State

Ms. Vaishali A. Shinde, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT AND

R.M. JOSHI, JJ.

DATE : 01st DECEMBER, 2022

PER COURT :

1. This is an appeal under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the Act'). The challenge in this appeal is to an order dated 21st September, 2022 in Special Case No. 30 of 2022 passed by the learned Additional Sessions Judge-1, Kandhar refusing to grant the appellant bail in connection with Crime No. 147 of 2022 registered with Kandhar Police Station, Dist. Nanded for the offences punishable under Sections 376(2)(n), 323 and 504 of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w) (ii) and 3(2)(va) of the Act.

2. Heard. Perused the First Information Report ('F.I.R.') and related papers.

3. Learned counsel for the appellant submits that considering the material placed in the charge-sheet, it can be seen that relationship between the appellant and the victim was consensual. In such circumstances, according to him, the appellant deserves to be enlarged on bail on filing of the charge-sheet.

4. Learned A.P.P. opposed the said submission by pointing out that offences alleged against the appellant are serious in nature. Learned counsel for Respondent No.2 – complainant vehemently submitted that it will not be in the interest of justice to release the appellant on bail considering the nature of allegations against him. She also brought to the notice of the Court that during the course of investigation, while the victim was being taken for recording her statement under Section 164 of the Code of Criminal Procedure, an attempt was made on her life. In view of these circumstances, she seeks rejection of the appeal.

4. There is no dispute about the fact that the investigation into the crime is already over and for that purpose further custody of the appellant is not necessary. Though the appellant is alleged of committing offence

punishable under Section 376 of the I.P.C., however prima facie consideration of the material on record indicates that there was consensual relationship between them. In the F.I.R. as well as in the history given to the Medical Officer, it is candidly mentioned by the victim about performance of marriage in between them. Possibility of lodging of F.I.R. owing to the subsequent disputes between the parties cannot be ruled out. In such circumstances, there is no justification to deny bail to the appellant. As far as the allegations regarding an attempt on the life of the victim during the course of investigation is concerned, since the appellant was in jail, the said incident cannot be attributed to him and certainly it cannot become a ground for rejection of the appeal.

5. In view of these facts, there is no propriety in keeping the appellant in jail after conclusion of investigation. Hence, the following order:-

ORDER

- (i) Criminal appeal is allowed.
- (ii) The appellant be released on bail, in connection with Crime No. 147 of 2022 registered with Kandhar Police Station, Dist. Nanded for the offences punishable under Sections 376(2)(n), 323 and 504 of the Indian Penal Code ('I.P.C.') and under Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(ii) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989, on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The appellant shall not tamper with the prosecution evidence.

(iv) Fees of Ms. Vaishali A. Shinde, learned counsel appointed to represent Respondent No.2, is quantified to Rs.6,000/- (Rupees Six Thousand).

(R.M. JOSHI, J.)

SSD

(R.G. AVACHAT, J.)