

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 188 OF 2022

Kiran Rabhaji Ghare

... Appellant

Versus

The State of Maharashtra and Anr.

... Respondents

Mr. Viral Rathod i/b Mrs. Saima Sothe and Mr. Faiyaz Sothe for the Appellant.

Mrs. M. M. Deshmukh, A.P.P for the Respondent No.1–State.

Ms. Devyani Kulkarni for the Respondent No. 2.

API Mr. Narayan Patil from Talegaon Police Station, is present.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 27th June, 2022.

ORDER : (PER : V.G.BISHT, J.)

Heard learned Counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal.

3 This criminal appeal is preferred under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

Act, 1989 (for short, “the SC ST Act”) against the order dated 28/01/2022 below Exh.3 in Special Case No. 763 of 2021 by learned Special Judge (cases under SC/ST (PoA) Act and Additional Sessions Judge, Pune, thereby rejecting the application under Section 439 of the Code of Criminal Procedure, 1973 (for short, “the Cr.P.C.”) in connection with C.R. No. 313 of 2021 registered with Talegaon Dabhade Police Station, Pune for alleged offences punishable under Sections 376, 504, 506 of the Indian Penal Code, Sections 39, 45 of Maharashtra Money Lending Act, Section 3(25) of Arms Act, Sections 66(E), 67, 67(A) of Information Technology Act, 2000 and Sections 3(1)(w)(ii), 3(2)(v), 3(2)(va), 6 of the SC ST Act.

4 It is the case of prosecution that the informant got acquainted with appellant through co-accused Deepak Oswal (A-2). As appellant came to know that the informant was in financial crunch, he advanced hand-loan of Rs.1,00,000/- with 10% interest to informant and her husband. The prosecution alleges that as the informant was unable to return the loan amount, the appellant started demanding physical relations and when she refused, on a

pistol point and after threatening that he would kill her husband and son and forcibly committed sexual intercourse against the informant's wish and also took video of the same. The prosecution further alleges that the appellant from time to time subjected the informant to forcible physical relations. Even the informant and the appellant visited various places in connection with business at Delhi, Pathankot, Amritsar and Surat and there also the appellant exploited the informant sexually. It is only on 08/08/2021 when the informant received whatsapp message, she could not tolerate and showed the message to her husband and thereafter lodged the report on 09/08/2021.

5 Pursuant to the registration of FIR under Crime No. 313 of 2021, the investigation started and after completion of investigation, charge-sheet came to be laid on 06/10/2021. The appellant moved an application (Exh. 3) under Section 439 of the Cr.P.C. before learned Special Judge and Additional Sessions Judge, Pune and after hearing the parties the learned Judge rejected the application. Therefore, the present Appeal.

6 Mr. Viral Rathod, learned Counsel for the appellant, vehemently submits that it is alleged that the first incident of rape had taken place on 01/04/2021 however, the FIR came to be lodged on 09/08/2021. The delay in lodging the FIR is nowhere explained by the prosecution. Further, according to learned Counsel, although it is alleged that the informant was forcefully taken by the appellant to the various places and exploited physically but the informant despite having ample opportunities to raise a voice against the alleged act of the appellant did not take any efforts to lodge a single complaint against the appellant. This in itself goes to show that the sexual relationship as alleged in the FIR, if any, was fully consensual.

7 Learned Counsel then next vehemently submits that the provisions of the SC ST Act are not applicable inasmuch as no reference about any allegations are made by the informant in the entire FIR. Moreover, having regard to the nature of offence and the fact that the charge-sheet has already been filed, no purpose would be served by keeping the appellant behind the bars.

8 Mrs. M. M. Deshmukh, learned APP, on the other hand, vehemently opposed the submissions and invited our attention to the contents of FIR and pointed out how the appellant to his advantage sexually exploited the informant. Having regard to the seriousness of offence, the present Appeal does not merit attention, argued learned APP.

9 We have gone through the record with the assistance of learned Counsel for appellant as well as learned APP.

10 If the very FIR is read carefully then it would be seen that the informant was first ravished in the month of April, 2021 and thereafter at various places from time to time by the appellant. During all these sexual encounters she did not raise her voice and kept accompanying / travelling with the appellant.

11 The informant is a grown-up and married lady knowing fully well the consequences of sexual exploitation and despite that she accompanied the appellant to various places albeit under business trip. Prima-facie, the act of the informant gives a semblance of

consensual relationship.

12 Equally important aspect of the case is that there is no murmur in the whole body of complaint about the ingredients of provisions of SC ST Act. Having regard to the facts and circumstances of the case and as also keeping in mind the conduct of the informant as discussed herein-above, in our considered view, the prosecution has not able to make out a prima-facie case about the commission of offence under the provision of SC ST Act. Therefore, the bar of Section 18 and 18A of the SC ST Act shall not be applicable.

13 In view of above, we pass the following order:-

ORDER

- i) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand Only) with one or two local sureties in the like amount.
- ii) The appellant shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to

11:00 a.m, till the filing of the charge-sheet;

iii) The appellant shall not enter the jurisdiction of Talegaon Police Station, Pune, where the prosecutrix is residing;

iv) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

v) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

vi) The appellant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

vii) The appellant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release;

viii) If there are two consecutive defaults either in

attending the Police Station or if the appellant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the appellant's bail.

14 Rule is made absolute accordingly.

15 All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.

REKHA
PRAKASH
PATIL

Digitally signed
by REKHA
PRAKASH PATIL
Date: 2022.07.04
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