

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

CRIMINAL APPEAL NO.750 OF 2022

Mayur Uttamrao Surawase

.... Appellant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Kuldeep Patil i/b. Mr. Shrikant D. Patil, Advocate for Appellant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.
- Mr. Sushan Mhatre (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 24th NOVEMBER, 2022

P.C. :

1. Leave to amend to remove the name of Respondent No.2. Amendment shall be carried out forthwith.

2. The Appellant has challenged the order dated 19/07/2022 passed by the Special Judge, Barshi, in Criminal Bail Application No.497 of 2022 thereby rejecting his application for anticipatory bail. The Appellant is apprehending his arrest in

connection with C.R.No.270 of 2022 registered at Kurduwadi Police Station for offence punishable u/s 376(2)(n) of the Indian Penal Code and u/s 3(1)(w)(i), 3(2)(va) of the The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Heard Mr. Kuldeep Patil, learned counsel for the Appellant, Mr. Sushan Mhatre, learned counsel for Respondent No.2 and Mr. S. R. Agarkar, learned APP for the State.

4. The FIR is lodged by the Respondent No.2. She has stated that she was residing in District Ahmednagar in a village along with her family consisting of mother and brother. At the time of lodging of FIR she was working in an agricultural field and was doing labour work. Before that she was working in a hospital as a nurse. In the year 2018 when she was dialing a number, inadvertently some unknown number was dialed. The person receiving that phone call was the Appellant. He told her that he was speaking from Ambejogai. They kept talking and

slowly their friendship developed. They met at Ahmednagar S.T. stand. On 01/12/2018 the Appellant told her that they were celebrating his friend's birthday at Kurduwadi and he called her there. She went to Karmala first and then to Kurduwadi around 06.00 p.m. The Appellant had come to the S.T. stand. Both of them then went to a lodge in Kurduwadi. It is her case that initially the Appellant told her that he was taking her to his friend's sister's house. But he did not do so and instead he established physical relations in that lodge itself. It is her case that she told him that she would not go back to Ahmednagar and would commit suicide. At that time, he told her that he would marry her. Therefore she went back to Ahmednagar. Even after that there used to be frequent telephonic conversations. It is her case that the Appellant told her that he was not married and he would marry her. According to her, based on this representation, she again came to Kurduwadi in September 2020 and again they had physical relations, though she has stated that it was against her wish. After that, she refused to meet him. It was her case that she belongs to a scheduled caste

and the Appellant was aware of that. She then discussed this issue with a social worker and then lodged the FIR.

5. Learned counsel for the Appellant submitted that from the FIR it is clear that it is a consensual relationship. Otherwise, the Respondent No.2 would not have come all the way from her village to Kurduwadi to meet him in a lodge. She was aware of the consequence of her acts. He further submitted that she was also aware that he was married though she is claiming that he had told her that he was not married. He further submitted that the FIR is lodged with a view to harass the Appellant. Harassment is still continuing and she is calling him frequently though he has blocked her number. Mr. Patil relied on the record and his additional affidavit which show such phone calls were made even after registration of the FIR. They were made by her as recently as on 21/11/2022. He therefore submitted that it is a clear case of harassment caused by the Respondent No.2 to the Appellant. He submitted that there is inordinate delay in lodging the FIR.

6. Learned APP pointed out the supplementary statement of the Respondent No.2. She has mentioned that somebody had put her mobile number on a social networking site and therefore she was harassed by unknown persons. She has expressed suspicion against the Appellant and others. Though, learned APP could not point out any material to connect the Appellant with these particular allegations.

7. Learned appointed counsel for the Respondent No.2 submitted that the FIR itself mentions that the Respondent No.2 had agreed to the physical relations only because of the representation made by the Appellant that he was not married. Because of this history, the Respondent No.2 is distraught and therefore perhaps there were calls made by her. But that does not wipe out the acts of the Appellant.

8. I have considered these submissions. At this stage, the Appellant has filed an additional affidavit pointing out that the

Respondent No.2 is continuously calling him even after registration of FIR, though he has blocked her number. Once she has lodged her FIR, then she should have refrained from calling him. Her act does support the submissions of Mr. Patil that the Respondent No.2 is harassing the Appellant and the FIR is also filed with a purpose to harass him.

9. The FIR itself mentions that the first informant/Respondent No.2 had met the Appellant at different places where neither of them was staying. They had their physical relations in a lodge. Therefore without commenting any further on that aspect it is possible that Mr. Patil's submission regarding consensual relationship has some force. However, it would not be proper to comment further on this aspect. The most important factor which I am taking into account is that the FIR is lodged on 08/06/2022 and the last incident according to her took place in September 2020. The delay is indeed inordinate and there is no acceptable explanation offered by the Respondent No.2. This indicates that the FIR is lodged as an

afterthought and there is possibility that the case of the Appellant as submitted by Mr. Patil could be true.

10. Based on this discussion, the Appellant has made out a case for protection of anticipatory bail order. However, it is also necessary to protect the interest of the Respondent No.2. All these observations made in this order are restricted to passing of this order only. The trial Court shall not be influenced by these observations while deciding the trial.

11. Hence, the following order :

ORDER

- (i) Appeal is allowed.
- (ii) In the event of his arrest in connection with C.R.No.270 of 2022 registered at Kurduwadi Police Station, the Appellant is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.

- (iii) The Appellant shall not cause any harassment to the Respondent No.2 either directly or indirectly. He shall not contact her. He shall not influence any of the witnesses in this case.
- (iv) Appeal stands disposed of accordingly.

(SARANG V. KOTWAL, J.)