

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

8 CRIMINAL APPEAL NO.853 OF 2022

**ATIK GULAM HUSSAIN KURESHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Narayan B. Narwade, Advocate for the appellant
Ms. Rani R. Tandle, Advocate for the respondent No.2
(appointed)
Mr. Y. G. Gujrathi, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 09th JANUARY, 2023

P. C.

1. The appellant has approached this court seeking his release on bail in connection with Crime No.0751 of 2022 registered with Shrigonda Police Station, Tq. Shrigonda, Dist. Ahmednagar dated 30-09-2022 for the offences punishable under Section 323, 327, 354-A, 354-B, 504, 506, 509 read with Section 34 of the Indian Penal Code and Section 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) and 3 (2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. Respondent No.2 lodged the offence against total four persons wherein this present appellant is shown as accused No.2. It appears from the FIR that there was earlier complaint also given by the informant against some of the accused persons

in respect of offence punishable under Section 376 of the IPC. In the complaint it is stated that for taking earlier complaint back, there was pressure on the informant. The informant had come for taking her son at Shrigonda, while on the way home four persons came in Annabhau Sathe Chowk and accosted her. The allegations against the present appellant shows that the appellant has clearly used the words insulting the informant in the name of her caste and also by addressing her as lady of bad virtues. It is further alleged that even the amount which the informant was carrying was also snatched by accused Munaf. The present appellant snatched the mobile phone from son of the informant.

3. The learned advocate for the appellant pointed out that there are already disputes pending between the parties. This informant even earlier filed a complaint for the offences punishable under Section 376 of the IPC. However, since she had falsely implicated this appellant in earlier case, on her own she had even executed the affidavit before the Executive Magistrate, Shrigonda that she has no objection to delete the offence under Section 376 of the IPC and release the present appellant on bail. In her affidavit she has clearly stated that due to mental pressure and due to anger she had filed the complaint against the appellant. Further pointed out that in fact he was required to make representation to the Deputy Commissioner of Police, Nashik Division, Nashik, Superintendent of Police Ahmednagar and other Police Officers stating that she is

pressurizing him and she had filed a false complaint against him. His complaint was sent through an e-mail dated 28-09-2022. It is thus submitted that this shows that informant has deliberately filed a false case against the appellant.

4. The learned advocate for the respondent submits that specific allegations are made in the complaint. She submits that there are criminal antecedents against the appellant. She submits that the appellant does not deserve any sympathy and any relief from this court.

5. Learned APP for the respondents/State produced the papers of investigation. He submits that there are 14 offences pending against the present appellant including three offences which are against women under Section 376 of the IPC filed by the informant in this case and other offences punishable under Section 354-A and 354-B etc. When the alleged incident took place, the appellant was already released on bail in connection with earlier offence. There were severe conditions imposed upon the appellant. However, he has breached all those conditions and has committed similar kind of offence. He submits that there is eye witness i.e. son of the informant. About the affidavit executed by the informant, she submits that in fact this affidavit shows that the victim was pressurized and therefore, she had executed such affidavit. About the whatsapp chatting copy of screen shot is produced on record. There is no date given. This chatting cannot be considered at this stage and prays for

rejection of the bail.

6. After considering the submission and after going through the documents, it is seen that clear case is made out against the appellant though it is tried to be pointed out that the allegations are false and those are leveled only to take revenge still at the prima-facie, this court cannot go into that aspect. Second aspect that needs to be considered is that there are 14 offences pending against present appellant that would itself disentitle him to seek any relief of release on anticipatory bail even otherwise. In this case, it is clear that allegations are clearly made out to attract the provision of Atrocities Act. Considering the provision of section 18 and Section 18-A of the Atrocities Act, it is clear that prayer of release on anticipatory bail cannot be considered as there is a bar and the provisions of Section 438 are not applicable. This court as well as the Hon'ble Apex Court in the case of Vilas Pandurang Pawar and another Vs State of Maharashtra and others reported in (2012) 8 SCC 795 & Pruthviv Raj Chauhan Vs. Union of India and others reported in (2020) 4 SCC 727 has held that when prima facie case is made out under the Atrocities Act, then there is clear bar. The court should not grant anticipatory bail. Considering the above aspects this court finds that the appeal deserves to be dismissed and therefore, same is dismissed and disposed off.

7. At this stage the learned advocate for the appellant prays for continuation of interim relief granted by this court on

21-11-2022 for a period of three weeks. Though request of learned advocate for the appellants is opposed by the learned advocate for the respondent and learned APP, the interim relief be continued only for a period of two weeks from today.

8. Learned advocate for respondent No.2 is appointed through Legal Aid shall be entitled to receive the fees of Rs.5,000/- for conducting the matter.

[KISHORE C. SANT, J.]

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