

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.867 OF 2022

ISHWAR BABURAO KANHERE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Appellant : Mr. Salunke Sudarshan J.
APP for Respondent No.1 - State : Ms. V. S. Choudhary
Advocate for Respondent No.2 : Mr. Patil Kuldeep S.
...

**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 23rd JANUARY, 2023.

ORDER :-

. **Admit.**

2. Present appeal has been filed under Section 14-A(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") challenging the rejection of the appellant's bail under Section 439 of the Code of Criminal Procedure by learned Special Judge, under the POCSO Act/ Extra Joint District Judge and Additional Sessions Judge, Latur on 01.10.2022. The FIR vide Crime No.110 of 2021 came to be registered with Chakur Police Station, Dist. Latur at the behest of respondent No.2 for the offences punishable under Sections 305, 323, 354-D, 506 of Indian Penal Code and under Sections 3(1)(w)(i), 3(2)(v), 3(1)(r),

3(1)(s) and 3(2)(va) of the Atrocities Act and under Sections 11(4), 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

3. Heard learned Advocate Mr. S. J. Salunke for the appellant, learned APP Ms. V. S. Choudhary for respondent No.1 - State and learned Advocate Mr. Kuldeep S. Patil for respondent No.2.

4. It has been vehemently submitted on behalf of the appellant that the investigation is over and charge-sheet is also filed. It is also alleged that a 17 year old girl committed suicide by hanging and as regards the appellant is concerned, it is stated that he used to harass her by expressing love towards her and insisting that she should speak to him. The appellant came to be arrested on 25.03.2021 and since 29.03.2021, he is in judicial custody. The learned Trial Judge has not considered the aspect that the investigation is over and further physical custody of the appellant is not required. The said order deserves to be set aside.

5. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the appeal and supported the reasons given by the learned Special Judge while rejecting the bail application under Section 439 of the Code of Criminal Procedure. They contend that the minor girl was forced to commit suicide by hanging due to the acts of the appellant. The

postmortem report gives probable cause of death as “asphyxia due to hanging”. When the active role is played by the present appellant, he does not deserve discretionary relief of bail.

6. At the outset, it is to be noted that there appears to be no dispute that the girl was minor, however, it would be a disputed fact as to whether the present appellant had committed the act of abetment so as to attract the offence under Section 305 of Indian Penal Code. The investigation is over and charge-sheet is filed. Under such circumstance, further physical custody of the appellant is not required for the purpose of investigation. It appears from the FIR that the main allegations which the prosecution and especially respondent No.2 intends to level are that the appellant was expressing his love towards the deceased and he wanted that she should talk to him and it is stated that he was stalking her with ill intention, however, in the charge-sheet itself, it appears that a chit has been found which has to be proved and it depicts something different than the contention. No doubt there are statements of witnesses, to whom the girl had expressed her apprehensions, but there is also statement of witness Harshdeep Gaikwad, who has stated that in fact there was love affair between the deceased and the appellant. If it was a love affair, then whether it would attract the offence under Section 354-D, 506 of Indian Penal Code and the other offences under the Atrocities Act itself would be the question. The appellant is in custody since

25.03.2021 and therefore, by imposing conditions, the learned Special Judge ought to have released the appellant. It cannot be stated that the discretion has been judiciously exercised when the learned Special Judge has rejected the application. The said order deserves to be set aside by allowing the appeal. Hence, the following order :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the POCSO Act/Extra Joint District Judge and Additional Sessions Judge, Latur in Special Case (POCSO) No.46 of 2021 dated 01.10.2022, stands set aside. The application stands allowed.
- iii) Appellant - Ishwar Baburao Kanhere, who has been arrested in connection with Crime No.110 of 2021 registered with Chakur Police Station, Dist. Latur for the offences punishable under Sections 305, 323, 354-D, 506 of Indian Penal Code and under Sections 3(1)(w)(i), 3(2)(v), 3(1)(r), 3(1)(s) and 3(2)(va) of the Atrocities Act, be released on P.R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.
- iv) The appellant shall not reside at village Talani, Tq. Renapur, Dist. Latur till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his

mobile number to the Trial Court as well as to the Investigating Officer.

v) He shall not tamper with the evidence of the prosecution in any manner.

vi) He shall not indulge in any criminal activity.

vii) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm