

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 10 OF 2023**

Uddhav Sunil Jagtap

...Appellant

V/s.

State Of Maharashtra And Anr.

...Respondents

Mr. Nagraj S. Shinde, for Appellant.

Mrs. M.H.Mhatre, A.P.P. for the Respondent No.1-State.

Mr. Sambhaji Kharatmol, Appointed Advocate for Respondent No.2.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.****DATE : 22nd FEBRUARY 2023.****P.C.:-**

. By the present Appeal under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short* 'SC/ST Act'), Appellant has impugned Order dated 09.12.2022 passed below Exhibit-4 in Special Sessions Case No.182 of 2022 by the Additional Sessions Judge, Satara rejecting the application of Appellant under Section 439 of the Code of Criminal Procedure (*for short* "Cr.P.C.") for bail in C.R. No.152 of 2022 registered with Medha Police Station, District Satara, for the offences punishable under Sections 376(2)(n), 366 read with Section 34 of Indian Penal Code and Sections 3(1)(w)(i)(ii)(r), 3(2), 3(v) and 6 of the SC/ST Act.

2. Heard Mr. Shinde, learned Advocate for Appellant, Mrs. M.H.Mhatre, learned A.P.P. for the Respondent-State and Mr. Sambhaji Kharatmol,

learned *amicus curiae* appointed to represent Respondent No.2-victim. Perused entire charge-sheet.

3. The First Information Report (*for short "FIR"*) is lodged by Respondent No.2 on 29.08.2022. It is the prosecution case that, the Appellant and Respondent No.2 were taking education at Government Technical Institute at Wai, District Satara. Initially there was friendship between them which subsequently blossomed into love affair. Appellant gave promise to marry with Respondent No.2 and under that pretext established physical relations with her. It is alleged that, the Appellant took Respondent No.2 at various hotels in the city of Wai and committed forcible sexual intercourse with her. Appellant on one or two occasions also had been to the house of Respondent No.2. Subsequently mother of Appellant informed Respondent No.2 that, as she belongs to lower caste, her marriage with Appellant cannot be performed. This incident occurred in August – 2021. That, Respondent No.2 thereafter, stopped meeting with Appellant and kept distance from him. The marriage of Respondent No.2 was subsequently settled with Mr. Samadhan D. Bhobhate of Village Chinchner Nimb, Taluka and District Satara. Their marriage was scheduled on 29.08.2022 at Village Kudal, Taluka Jawali.

On 29.08.2022, the said prospective groom of Respondent No.2 received certain objectionable photographs of Respondent No.2 with a boy and also a mobile phone call to confirm it and therefore the parents of said

groom informed the parents of Respondent No.2 that, they are unable to perform the said marriage for the said reason. Thus, the marriage of Respondent No.2 was broken. In this brief premise present crime is registered.

4. Mr. Shinde, learned Advocate for Appellant submitted that, as per the FIR itself, Respondent No.2 has admitted that, she was in relation with Appellant from 2019 till August 2021 and subsequently they ended their relations. He submitted that, mere breach of promise of marriage would not attract Section 376 of Indian Penal code. That, merely because the Respondent No.2 belongs to a particular caste or community, the provisions of SC/ST Act have been applied to the present crime. He placed reliance on the decision of the Hon'ble Supreme Court in the case of *Uday Vs. State of Karnataka* reported in 2003 0 AIR (SCW) 1035 and submitted that, the victim was in love with Appellant and under the pretext of performing marriage i.e. under misconception had sexual intercourse with him. That, Respondent No.2 was aware of the fact that, the marriage was not possible due to the differences in their caste and therefore offence under Section 376 of the Indian Penal Code cannot be applied to the present Crime. He submitted that, Appellant was aged about 20 years only when his affair with Respondent No.2 was blooming. That, the prosecutrix was elder than Appellant and this is also the reason that, the said marriage was not possible. He drew our attention to the statement of Mr. Ajay V. Bhise i.e.

the cousin brother of Respondent No.2 and submitted that, the photographs in the mobile of all the concerned were deleted and therefore the police did not recover the same. The said circumstance against Appellant, therefore cannot be taken into consideration. He therefore prayed that, impugned Order dated 09.12.2022 may be set aside and Appellant be released on bail.

5. Mr. Sambhaji Kharatmol, learned *amicus curiae* appointed to represent Respondent No.2 opposed the Appeal and pointed out all the material available against Appellant from the charge-sheet. He submitted that, it is not a simpliciter case of breach of promise of marriage. The Appellant has ruined the life of Respondent No.2 by circulating her objectionable photographs with Appellant to her prospective groom and other relatives. He submitted that, the offence committed by Appellant is serious in nature and therefore Appellant does not deserve to be released on bail during the pendency of trial.

Learned A.P.P. also opposed the Appeal and submitted that, Appellant may not be released on bail.

6. Perusal of First Information Report though prima facie indicates that, Appellant was having an affair with Respondent No.2, what is disturbing is the fact that, after it came to an end in the August – 2021, instead of parting ways happily, Appellant on 29.08.2022 i.e. the day on which the marriage of Respondent No.2 with Samadhan Bhobhate was to be performed, circulated his photographs with Respondent No.2 exhibiting

intimacy, to her prospective groom and his other relatives. It is the precise reason for which the marriage of Respondent No.2 was broken by her prospective groom and the Respondent No.2 was defamed in the society at large due to the same. Inter alia the Appellant is instrumental in not only ruining future life of Respondent No.2 but has devastated it.

7. In view of the above, we are not inclined to release the Appellant on bail during the pendency of trial.

8. After perusing the impugned Order dated 09.12.2022 passed below Exhibit -4 in Special Sessions Case No.182 of 2022 by Additional Sessions Judge, Satara, we are of the view that, the trial Court has not committed any error either in law or on facts while passing it.

9. Appeal is *dehors* of merits and is accordingly dismissed.

10. As the Appellant is in Jail since 30.08.2022, we hereby request the learned Additional Sessions Judge, Satara, seized of Special Sessions Case No.182 of 2022 to expedite the hearing of the said case and to make an endeavour to conclude the same within a period of one year from the date of receipt of the present Order.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)