

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 915 OF 2022**

Ganesh Shankar Kale

... Appellant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Kishan Chaudhari a/w. Mr.R.B. Thombare & Mr.S.S. Patil for Appellant.

Ms. S.D. Shinde, A.P.P. for Respondent No.1-State.

Mr. Irfan A. Shaikh, Appointed Advocate for Respondent No.2.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.****DATE : 9th February 2023.****P.C. :**

1. By the present Appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment Act 2015) (for short, "S.C. & S.T. Act"), the Appellant, Original Accused No.1 has impugned Order dated 8th August 2022 passed below Exh.1 in Criminal Bail Application No. 770 of 2022, by the learned Additional Sessions Judge-2, Baramati, District Pune, rejecting his application for bail in C.R. No. 300 of 2022 dated 21st May 2022 registered with Baramati Taluka Police Station, District Pune (R.) under Sections 3(1)(w), 3(1)(w)(i)(ii), 3(1)(r)(s), 3(2)(va) of the S.C. & S.T. Act and Section 7(1)(d) of the Protection of Civil Rights Act, 1955.

2. Heard Mr.Chaudhari, learned Advocate for Appellant, Ms.Shinde, learned A.P.P. for Respondent No.1-State and Mr.Shaikh, learned Advocate appointed for Respondent No.2. Perused entire record produced before us.

3. Respondent No.2 has lodged First Information Report (F.I.R.) on 21st May 2022 against the Petitioner and two other co-accused namely, Ganesh Jagtap and Samar Kotmire. It is the prosecution case that, the Respondent No.2 got acquainted with the Appellant on social media, namely, Instagram. Their friendship subsequently blossomed into a love affair. At the request of Appellant, Respondent No.2 went to Akuj. Appellant took Respondent No.2 to the flat of co-accused Samar Kotmire. That, the Appellant administered stupefying substance in a cold drink to the Respondent No.2 and thereafter committed an act as contemplated under Section 376 of the Indian Penal Code. When the Respondent No.2 gained consciousness, she found that she had been ravished and therefore started crying loudly. At that time the Appellant, co-accused Ganesh Jagtap and Samar Kotmire rushed to the bedroom of the said flat and threatened the Respondent No.2 of dire consequences, if she discloses the said fact to anybody. It is alleged that, the Appellant also threatened the Respondent No.2 that he had carried out videography of the said incident and if the Respondent No.2 discloses the said fact to anybody, he would make the said videography viral on social media. Subsequently by blackmailing the

Respondent No.2, Appellant continued to have forcible sexual relationship with Respondent No.2. In the month of September 2019, Respondent No.2 got pregnant. She disclosed the said fact to Appellant, upon which the Appellant gave her certain medicines due to which the pregnancy of the Respondent No.2 was terminated. That, on 17th February 2022 the Respondent No.2 went to the house of the Appellant, when the parents of Appellant and his other close relatives drove the Respondent No.2 away by abusing her on her caste. In this brief premise present crime is registered.

4. A perusal of F.I.R. itself indicates that, the Respondent No.2 has admitted the fact that, she was having affair with the Appellant and at her own will she had been to Akuj from Baramati on 25th July 2019 to attend the birthday celebration of Appellant. Perusal of record *prima-facie* indicates that, at the time of seizure of mobile phone of Appellant, no photography/video recording was noticed by the Investigating Officer pertaining to the alleged act dated 25th July 2019 or of any other subsequent date. It further *prima facie* appears that, the present crime is registered after about 2 years from the alleged incident dated 25th July 2019. The Respondent No.2 did not lodge complaint or made grievance about her alleged termination of pregnancy at the instance of Appellant either to her parents or to her other close relatives. It appears that, the relationship between the Appellant and Respondent No.2 was consensual relationship between two adult persons and when their relationship got soured, the

present crime is belatedly registered.

5. It is to be noted here that, this Court by its Order dated 13th January 2023 passed in Criminal Appeal No. 996 of 2022 has granted pre-arrest bail to co-accused Samar Kotmire for the reasons stated therein. The Appellant is behind bars since 20th June 2022. The investigation of the present crime is already completed and Police have submitted chargesheet. According to us, no purpose would be served by keeping the Appellant behind bars as pre-trial incarceration. Learned Advocate for Appellant on instructions submitted that, there are no antecedents at the discredit of the Appellant.

6. In view of above, the Appellant can be released on bail during the pendency of the trial.

Hence, the following Order :-

- (i) Applicant be released on bail in C.R. No. 300 of 2022 dated 21st May 2022 registered with Baramati Taluka Police Station, District Pune (R.) on his furnishing PR. bond of Rs.25,000/- with one or two local sureties in the like amount.
- (ii) After his release from jail, the Appellant shall attend Baramati Taluka Police Station on every first Monday of the month between 10.00 am and 12 noon till conclusion of trial.

(iii) Appellant shall not contact Respondent No.2 or other witnesses or threaten them. Appellant shall not tamper the evidence.

7. In view of above, impugned Order dated 8th August 2022 passed below Exh.1 in Criminal Bail Application No. 770 of 2022 is set-aside.
8. Appeal is allowed in the aforesaid terms.
9. All the concerned to act on the basis of an authenticated copy of this Order.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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