

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 996 OF 2022**

Samar Uday Kotmire

.....Appellant

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Umesh R. Mankapure for the Appellant.

Mr. Tapan Thatte, appointed Advocate for Respondent No.2.

Ms. M.H. Mhatre APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 13th JANUARY, 2023.

P.C.:-

By the present Appeal under Section 14A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short, "*the SC & ST Act*'), the Appellant original Accused No.3, has impugned Order dated 21st September, 2022 passed below Exh.1 in Criminal Bail Application No. 1048 of 2022 by the learned Additional Sessions Judge 2, Baramati, District Pune rejecting his Application for pre-arrest bail in Crime No.300 of 2022 dated 21st May, 2022 registered with Baramati Police Station, Pune (Rural).

2) Heard Mr. Mankapure, learned Advocate for the Appellant, Ms. Mhatre, learned APP and Mr. Thatte, learned Advocate appointed to represent Respondent No.2 by this Court. Perused record.

3) Learned Advocate for the Appellant submitted that, Appellant belongs to Hindu Khatik Community, a Scheduled Caste and therefore bar under Section 18 of the SC & ST Act is not attracted to the present case.

4) Perusal of first information report would indicate that, there is no allegation against the Appellant for commission of an act as contemplated under Section 376 of the Indian Penal Code. It is the co-accused i.e. Accused No.1 Ganesh Kale, who informed Respondent No.2 that, on 25th July, 2019 when he committed the alleged offence under Section 376 of the IPC at the flat of Appellant, the Appellant and other Accused had held her hand and effected photography/video recording on the mobile phone of Accused No.1. *Prima facie* it appears that, at the time of seizure of mobile phone of Accused No.1, no such photography/video recording was noticed by the Investigating Officer.

As per the contention of the learned Advocate for the Appellant, the alleged flat does not belong to Appellant and it stands in the name of somebody else.

5) In view of the above, the Appellant can be protected by pre-arrest bail.

Interim relief granted by Order dated 10th November, 2022 is hereby confirmed.

6) Impugned Order dated 21st September, 2022 passed below Exh-1 in Criminal Bail Application No.1048 of 2022 is set aside and Appeal is accordingly allowed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)