

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 858/2022

Rahul s/o Dnyaneshwar Khanderao .Vs. The State of Maharashtra, through PSO
P.S., Balapur, Dist. Akola and another.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. R. M. Tahaliyani, Advocate for appellant.
Ms S. Haider, A.P.P for respondent-State.
Ms P Rani, Advocate for informant.

CORAM : ANIL L. PANSARE, J.
DATE : JANUARY 24, 2023.

The appellant has filed appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, taking exception to order dated 21.10.2022 passed by the Sessions Court in Misc. Criminal Application No. 791/2022, thereby rejecting the application filed by the appellant under Section 438 of the Code of Criminal Procedure.

2. The appellant is apprehending arrest in Crime No.449/2022, registered with Police Station, Balapur, District Akola, for an offence punishable under Sections 354-D, 341, 500, 506 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2), 5-A of the Atrocities Act.

3. Briefly stated, the case of the prosecution is that upon the report lodged on 22.09.2022 by the informant, the law was set in motion. I have gone through the report with

the assistance of the learned counsel for the appellant, learned Additional Public Prosecutor for the State and learned counsel for the informant.

4. The offence is said to have been committed between the period from 28.06.2021 to 11.09.2022. The informant is working as Assistant Manager with Vidarbha Konkan Gramin Bank, Balapur, District Akola since 28.06.2021. The appellant was known to her. It appears that in the year 2018, the informant had been to Pune to join certain classes. On 10.09.2018, the appellant called her to celebrate her birthday. The appellant is said to have clicked certain photographs. Thereafter, he continued talking with the informant on phone. The appellant used to frequently message her. The informant therefore blocked his number. In March-2020, the informant came back to her home town. She had instructed the appellant not to call her. However, he continued to call and propose her to marry.

5. The informant further states that after she joined as Assistant Manager on 28.06.2021, the appellant is continuously making phone calls to her with proposal of marriage. The appellant is said to have threatened the informant that if she does not marry, he will publish photographs clicked on birthday, on social media. In April-2022, when the informant was going back home in her car, the informant intercepted the car and made a request to meet,

but she refused. This harassment continued and therefore the FIR.

6. Learned counsel for the appellant submits that the offences registered against the appellant under the IPC are bailable. He contends that the provisions of the Atrocities Act could not have been invoked as the offence under question has not been committed on the ground that the informant belongs to the Scheduled Tribe.

7. Learned Additional Public Prosecutor, who is joined by the learned counsel for the informant to oppose the appellant, contends that the harassment does not really stop at the FIR. It is argued that the appellant is still harassing the informant and that therefore no leniency should be shown. It is further argued that the appellant had made an attempt to contact the informant by changing the SIM cards. Those SIM cards are to be seized. Therefore, custody is necessary.

8. Having heard both the sides and having gone through the material placed before me, it appears that the appellant and the informant were in a relationship. This fact of relationship has been suppressed by the informant when she lodged report with police. It is only when the appellant came up with a case of relationship, the prosecution has admitted the said status in reply. The learned Sessions Judge, however, has recorded in paragraph 8 of the impugned order that it is the prosecution's case that initially the parties were

having friendly relationship, thereafter the informant gave intimation of her disinterest of marrying with the appellant and thus broke the relationship, the appellant however followed her and caused harassment. If this is true, the informant ought to have disclosed this fact before the police. She has straightway projected the appellant as culprit.

9. What transpires therefore is that the appellant and the informant were in a relationship. The appellant has annexed with the appeal certain photographs that support the theory of relationship. Even otherwise, the prosecution does not dispute that these two persons were in a relationship. If that be so, the allegations made by the informant that the appellant clicked certain photographs only in the birthday party appears to be an after thought inasmuch as the appellant appears to have been in possession of certain photographs that were clicked prior to the informant's birthday. In that sense, it would be difficult to accede to the story put forth by the informant that the appellant threatened her of publishing the photographs clicked on her birthday. The appellant was in possession of other photographs as well. That apart, it is nobody's case that the photographs were obscene or that publishing the photographs would cause certain embarrassment to the informant.

10. Be that as it may, learned counsel for the appellant has rightly argued that the offences under the Indian Penal Code are bailable. So far as provisions of the Atrocities Act

are concerned, the FIR is silent on the point that the harassment was made or continued on the ground that the informant belongs to the Scheduled Tribe. It is the informant who said to the appellant that she belongs to the Scheduled Tribe and that the appellant belongs to Patil community. It is the informant who has refused to marry the appellant on the said ground. Thus what transpires is that the appellant was interested in getting married to the informant who belongs to the Scheduled Tribe. It cannot be therefore said that the appellant has harassed or continued the harassment on the ground that the informant belongs to the Scheduled Tribe. It will, thus, be challenging to the prosecution to justify applying the provisions of the Atrocities Act.

11. Learned counsel for the informant however is harping upon the subsequent acts of the appellant. She submits that the appellant is still continuing the harassment. He is not allowing the informant to work. However, when a query was made as to whether these grounds are sufficient to reject the application, when the offences alleged are bailable, there is no justification coming forth from the prosecution or the informant.

12. The sum and substance of the above discussion is that the offences in question are bailable in the light of what has been observed in earlier paragraphs on the applicability of the provisions of the Atrocities Act. The learned Sessions Court committed an error in recording the prosecution's case

to be of relationship. Based on such assumption, the Sessions Court found fault in the behaviour of the appellant. The findings, thus, require correction.

13. On inquiry, the learned counsel for the appellant submits that there are no criminal antecedents against the appellant. He is working as Telecall Executive with a company known as Team Lease. He is permanent resident of Maharashtra. He has strong roots in the society. The maximum punishment for the offence is five years. The apprehension put forth by the prosecution and the informant can be dealt with by putting the appellant to appropriate terms.

14. The observations made in this order are prima facie in nature and are made for deciding the present application only. The learned Court, shall not get influenced by the above observations.

15. Resultantly, following order is passed.

ORDER

(i) The appeal is allowed.

(ii) Impugned judgment and order dated 21.10.2022 passed by Additional Sessions Judge, Akola in Misc. Criminal Application No. 791/2022 is quashed and set aside.

(iii) In the event of arrest in Crime No.449/2022, registered with Police Station, Balapur, District Akola, for an

offence punishable under Sections 354-D, 341, 500, 506 of the Indian Penal Code and Sections 3(1)(w)(i), 3(1)(w)(ii), 3(2), 5-A of the Atrocities Act, appellant- Rahul s/o Dnyaneshwar Khanderao, be released on bail on he furnishing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall attend Police Station, Balapur, District Akola on every Sunday between 11:00 a.m. to 01:00 p.m., till filing of the charge-sheet.

(v) The appellant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and to the Court concerned and shall not change the residence till the final disposal of the case.

(vi) The appellant shall not make any phone call and also shall not contact the informant in any manner.

(vii) The appellant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(viii) The appellant shall not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.

(ix) The appellant shall not commit similar such offence and also shall maintain law and order.

(x) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The appeal is disposed of.

(Anil L. Pansare, J.)

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