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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.778 OF 2023

XYZ

..APPELLANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Neha R. Kokare for the appellant.

Mr. S. H. Yadav, APP for the State.

PSI Vijay Kolhe, Yawat Police Station, Pune Rural.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 9, 2024

JUDGMENT :

1. Heard learned counsel for the appellant and learned APP for the State.

2. The appellant by this Criminal Appeal challenges an order dated 13.04.2023 enlarging the respondent No.2-original accused No.1 on bail in respect of the offences punishable under Sections 376(2)(n), 385, 389, 504, 506, 109 read with 34 of the Indian Penal Code, 1860, under Sections 3(1), 3(1)(2), 3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 7(1)(d) of the Protection of Civil Rights Act, 1955.

3. Learned counsel for the appellant submitted that the trial Court erred in coming to the conclusion that the relationship appears to be consensual in nature. According to learned counsel for the appellant, in the FIR it is mentioned that the victim was taken to the lodge only once whereas the trial Court erroneously proceeded on the footing that the accused had taken the informant to the lodge on several occasions.

4. I have gone through the order of the trial Court. Respondent No.2-original accused No.1 is on bail since 13.04.2023. The reasons which prevailed with the trial Court while enlarging the applicant on bail finds mention in the impugned order. The bail granted is on a sound consideration. I am not inclined to interfere with the order passed by the trial Court.

5. Learned counsel for the applicant however submitted that the accused No.2 who was granted anticipatory bail as well as the present respondent No.2-accused No.1 are threatening the appellant and such averments are found in ground No.9 of the Appeal memo. Though I am not inclined

to interfere with the order of the trial Court, it is necessary to observe that it is open for the appellant to bring this fact to the notice of the trial Court. Based on the facts which are placed for consideration before the trial Court as regards the threats issued, the trial Court can always consider to grant of witness protection to the appellant or for cancellation of bail for breach of conditions. It is open for the appellant to move an application for cancellation of bail before the trial Court on the ground that the threats are being issued by the accused or that there is an attempt to tamper with the witnesses. If such an application is made, the same shall be considered on its own merits without being influenced by the observations made in this order. The trial Court may pass appropriate orders thereon in accordance with law.

6. Subject to the aforesaid observations, the Criminal Appeal is rejected.

(M. S. KARNIK, J.)