

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.1050 OF 2019

Sachin Trimbak Jadhav

Age : 23 years, Occu : Labour,

R/o : Lahuji Nagar Gangakhed,

Tal. Gangakhed, Dist. Parbhani

... Appellant

Vs.

1. The State of Maharashtra
Through Investigation Officer,
Gangakhed Police Station, Gangakhed,
Tal. Gangakhed, Dist. Parbhani.

2. Balu @ Sanjay Hanuman Mundhe
Age : 21 years, Occu : Auto Driver,
R/o : Mahatma Phule Nagar, Gangakhed,
Tal Gangakhed, Dist. Parbhani

... Respondents

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Advocate for Appellant : Shri Azizoddin R. Syed And Shrimant Mundhe

APP for Respondent – State : Shri A. A. Jagatkar

Advocate for Respondent No.2 : Shri Santosh B. Bhosle

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CORAM : K.K. SONAWANE, J.

DATE : 7th NOVEMBER, 2019

ORAL JUDGMENT :

1. Heard learned counsel for the parties.

2. Rule. Rule made returnable forthwith. Matter is taken up
for final hearing on merit with the consent of both sides.

3. The appellant, taking recourse of Section 14-A(1) of

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, preferred the present proceeding to quash and set aside the impugned order dated 10-10-2019 passed by the learned Additional Sessions Judge, Gangakhed in bail application filed in Crime No. 433 of 2019, registered at Gangakhed Police Station, District Parbhani for the offences punishable under Sections 324, 323, 504 read with Section 34 of the Indian Penal Code and under Sections 3(1)(R)(S) and 3(2)(VA) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as “Act of 1989” for brevity).

4. It has been alleged on behalf of prosecution that the first informant Shri Balu @ Sanjay Hanuman Mundhe on 05-10-2019 approached to the police of Gangakhed Police Station and filed report that he had taken Rs.500/- on credit from one Nitin Walke for repairing work of his Auto Rikshaw. On 04-10-2019 at about 08.30 p.m., the appellant – accused and his accomplice intercepted the complainant - first informant and made demand of Rs.500/- given to him on credit. The first informant disclosed to them that he had no money and he would pay the amount later on, but the appellant – accused and his accomplice were insisting for payment of money. They hurled casteist abuses and also beaten up the complainant by fist and pelted the stones. They caused injuries to the first informant. Therefore, he filed

report to the police.

5. Pursuant to F.I.R. the police of Gangakhed Police Station registered the crime and set the penal law in motion. Investigating Officer recorded statement of witnesses acquainted with the facts of the case. The appellant came to be arrested for the sake of investigation. Pending investigation, appellant moved an application under Section 439 of Cr.P.C. for his bail into the crime before the Additional Sessions Judge, Gangakhed. The learned Additional Sessions Judge considered the allegation and found reluctant to nod in favour of appellant. In the result, the learned Additional Sessions Judge rejected the application to admit the appellant on bail pending investigation. Being dissatisfied with the order of rejection of bail application, the appellant preferred the present appeal to redress his grievances.

6. The learned counsel for the appellant submits that the appellant is innocent of the charges pitted against him. He has not committed any crime, but he has been falsely implicated in this case. There are no specific allegations nurtured against the present appellant. There was no any sort of recovery during the course of investigation from the appellant / accused. The I.O. availed sufficient opportunity for investigation and thereafter the appellant was remanded to Magisterial Custody. The learned counsel further drawn the attention of this Court

towards the affidavit-in-reply filed by respondent No.2 – original first informant in this case. In the affidavit-in-reply, the first informant deposed that the present F.I.R. came to be filed due to misunderstanding and he has no any objection to release the present appellant on bail. Moreover, the appellant and first informant decided to file proceeding for compounding the present crime. Therefore, the learned counsel for the appellant requested to allow the appeal.

7. Learned APP raised objection and submits that the appellant has an criminal antecedents. The criminal cases of assault with deadly weapons etc. were registered against him. Therefore, he may not be released on bail. The investigation is still going on and it would create hurdle during the course of investigation.

8. Having given anxious consideration to the arguments advanced on behalf of both sides, I find it difficult to rebuff the relief of pre-arrest bail to the appellant. The the reasonable opportunity has already been availed by the I.O. for investigation of the crime. It would unjust and improper to turn down the relief of pre-arrest bail only for the reason that there are criminal cases pending against the appellant. The first informant filed the affidavit-in-reply and shown inclination for compounding the present crime with the permission of the Court. These circumstances show that there is no possibility of tampering with

the evidence of prosecution witnesses. The appellant was remanded to Magisterial Custody and there was no necessity to keep the appellant behind bar for the sake of investigation. In view of nature of offence and gravity of allegations, I do not find any impediment to release the appellant on bail pending the investigation. There should not be any pre-conviction incarceration by way of punishment for the appellant – accused. In such circumstances, the appeal deserves to be allowed.

9. Accordingly, the Criminal Appeal No. 1050 of 2019 stands allowed. The impugned order of rejection of bail application filed on behalf of appellant, dated 10-10-2019 in C.R. No. 433 of 2019, is hereby set aside and quashed. The appellant be released on bail on furnishing P.R. Bond of Rs.20,000/-(Rupees twenty thousand only) with one solvent surety of like amount. The appellant shall not indulge, directly or indirectly, in any kind of activities of tampering with the evidence of prosecution witnesses. Bail before the learned trial Court.

10. Accordingly, the criminal appeal stands disposed of in above terms. No order as to costs.

(K.K. SONAWANE, J.)

SVH