

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

CRIMINAL APPEAL NO.241 OF 2020

KRUSHNA S/O. UTTAM KUNTE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Appellants : Shri C.C. Deshpande h/f Shri Govind M.
Sharma

APP for Respondent 1/ State : Shri S.D. Ghayal
Advocate for Respondent 2 : Shri R.O. Awasarmol

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**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 26th November, 2020

Per Court :-

1. This matter was heard at length on 24.11.2020 and today.
2. We have perused the interim order passed by this Court
(Coram : T.V. Nalawade & M.G. Sewlikar, JJ.) dated 16.03.2020, which
reads as under :-

“Heard the learned counsel for Appellants. Seen the order made by the learned Additional Sessions Judge, Aurangabad [Special Judge appointed under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act]. The learned counsel for Appellants drew the attention of this Court to the order made by this Court in Criminal Writ Petition No.1502 of 2019 (Uttam Sandu Kunte Vs. The State of Maharashtra and others) dated 15th November, 2019. He drew the attention of this Court to the proceeding, which was

filed before the Judicial Magistrate First Class in which the order of investigation is made. The said proceeding came to be filed on 27th November, 2019, after making of the order made by this Court against the concerned to take action against the Sarpanch and Gram Sevak. Incident of 15th August, 2019 is mentioned in the complaint dated 27th November, 2019 and on the basis of order made in that proceeding, crime is registered and investigation is started. The submissions made show that only due to the order made by this Court and due to the political rivalry, complaint came to be filed before the Magistrate and prior to that no report was given to police. There appears to be some force in the submissions made for the Appellants in view of the aforesaid record. This Court holds that ad-interim relief needs to be granted in favour of the Appellants. In the result, the following order is passed:

O R D E R

- I. Issue notice for final disposal to the Respondents. The learned APP waives the notice for Respondent No.1. Notice to Respondent No.2 is made returnable on 7th April, 2020. Additional notice by R.P.A.D. and private notice allowed. Hamdast allowed.*
- II. Till the next date, interim relief is granted.*
- III. In case of arrest of Appellants in Crime No.7 of 2020, registered with Wadod Bazar Police Station, District Aurangabad, for the offences punishable under Sections 353, 332, 504, 506 and 34 of the Indian Penal Code and Sections 3(1)(r)(m), 3(2)(v)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they are to be released on furnishing P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) by each of them.*
- IV. The Appellants are not to tamper with prosecution witnesses. They are not to commit similar offence while on bail.*
- V. The Appellants are to attend the concerned police station on 21st March, 2020 between 09:00 am and 12:00 noon and they are to cooperate the police during investigation.”*

3. The learned Prosecutor and the learned advocate appearing on behalf of respondent No.2/ original complainant, have strenuously opposed this appeal and the prayer for bail on the ground that the F.I.R. indicates the involvement of these four appellants along with the prime accused No.1/ Uttam Kunte and the acts committed by them attract the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is, therefore, prayed that this appeal be rejected since these appellants are likely to indulge in similar acts. Shri Awasarmol submits that even after grant of bail, non cognizable offence has been registered at the behest of respondent No.2/ original complainant and that there is every possibility that these appellants would violate the conditions of bail. We find that no non cognizable offence has been registered against any of these four appellants before any Police Station after they were granted interim bail.

4. We have perused the F.I.R., threadbare and we find that the informant/ complainant has named these appellants as accused Nos.2 to 5. The prime accused is Uttam Sandu Kunte, who is said to have used foul and filthy language against respondent No.2, a lady Sarpanch, and had thrown his shoe towards her in order to hit her. As respondent No.2 dodged the said attack, the shoe had hit her husband's sister, who was along with her. The said Uttam Kunte was arrested and has been granted

regular bail by the learned Special Court on 17.03.2020. The entire F.I.R. contains the complaint of the informant insofar as these four appellants are concerned, with the statement as “गैरअर्जदार क्र. १ ते ५” and at various places the role of these four appellants has been ascribed as “गैरअर्जदार क्र. १ ते ५”. Barring accused No.1/ Uttam Kunte against whom there are specific allegations of assault and beating with a shoe, there are no specific allegations as against these four appellants. It is in this backdrop that this Court had granted interim bail to these four appellants vide order dated 16.03.2020.

5. The learned Prosecutor and the learned advocate for respondent No.2 submit that this Court had mandated the attendance of these four appellants in the Police Station only on 21.03.2020 between 09:00 AM and 12:00 Noon. Post such attendance, they have never marked their attendance in the Police Station and until the trial is over, certain conditions as regards marking their attendance in the Police Station need to be imposed.

6. The learned advocate for the appellants submits that they do not have any intention of violating any bail condition and if this Court is of the opinion that their attendance is required, they would obey such directions.

7. In view of the above, this Criminal Appeal is allowed. The conditions imposed by this Court in clauses III and IV of the order dated

16.03.2020 shall continue to apply and which read as under :-

- “III. In case of arrest of Appellants in Crime No.7 of 2020, registered with Wadod Bazar Police Station, District Aurangabad, for the offences punishable under Sections 353, 332, 504, 506 and 34 of the Indian Penal Code and Sections 3(1)(r)(m), 3(2)(v)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they are to be released on furnishing P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) by each of them.*
- IV. The Appellants are not to tamper with prosecution witnesses. They are not to commit similar offence while on bail.”*

8. In addition to the above, these appellants shall mark their attendance with the Wadod Bazar Police Station, Aurangabad, on every Tuesday and Friday in between 10:00 AM and 01:00 PM, until the trial is over. The Station House Officer shall obtain their signatures in the station house diary and record their attendance.

9. These appellants shall cooperate in the investigation and shall report before the Sub-Divisional Police Officer, Sub-Division (Rural), Aurangabad as and when directed, till filing of the charge sheet.

10. Violation of any of the conditions for bail, would be a ground for cancellation of bail.