

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

CRIMINAL APPEAL NO.364 OF 2020

1 Vijay Bhagwan Koli,
 Age 21 yrs., Occ. Labour,

2 Kailas Digambar Tayde,
 Age 24 yrs., Occ. Labour,

3 Bhagwan Daulat Koli,
 Age 53 yrs., Occ. Labour,

All are r/o Manwel, Tq. Yawal,
Dist. Jalgaon.

... Appellants

... **Versus** ...

1 The State of Maharashtra
 Through Police Inspector,
 Yawal Police Station, Tq. Yawal,
 Dist. Jalgaon.

2 Prathmesh Sunil Sonawane,
 Age 19 yrs., Occ. Nil,
 R/o Siddharth Nagar, Manwel,
 Tq. Yawal, Dist. Jalgaon.

... Respondents

...

Mr. M.G. Patil, Advocate for appellants

Mr. A.M. Phule, APP for respondent No.1-State

Mr. Shaikh Tarek Mobin H., Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th AUGUST, 2020

JUDGMENT :

1 **Admit.**

2 Present appeal has been filed under Section 14-A of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
The appellants are apprehending their arrest in Crime No.99/2020 registered
with Yawal Police Station, Dist. Jalgaon for the offence punishable under
Section 324, 341, 143, 147, 148, 149, 323, 506, 510 of the Indian Penal
Code, under Section 3(1)(r)(s) of the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989 and under Section 37(1)(3) of Bombay
Police Act. They had approached Special Judge, Bhusawal with Bail
Application No.347/2020 under Section 438 of the Code of Criminal
Procedure. Their bail application came to be rejected on 20.06.2020, which
is under challenge in this appeal.

3 Heard learned Advocate Mr. M.G. Patil for the appellants and
learned APP Mr. A.M. Phule for respondent No.1-State. Though the
respondent No.2-original informant was served, he remained absent, and
therefore, this Court had appointed Advocate Mr. Shaikh Tarek Mobin H. to
represent the cause of respondent No.2. Heard Advocate Mr. Shaikh Tarek
Mobin H. also.

4 It has been vehemently submitted on behalf of the appellants, that the informant has lodged the First Information Report against them by concocting the story. Even if we take the contents of the FIR as it is, yet, it does not disclose offence under Atrocities against the present appellants. They have not uttered any such words, which would be involving his caste. The informant has involved almost all the family members. The physical custody of the appellants is not required, and therefore, the learned Additional Sessions Judge ought to have allowed their application for anticipatory bail.

5 Per contra, the learned APP as well as learned appointed Advocate strongly opposed the application and submitted, that the appellants have assaulted the informant by stick and that stick is required to be seized. They had the knowledge about the caste of the informant. Informant's friend Sachin Sonwane was assaulted by appellant No.1. His left hand was swollen, which might have turned into a grievous hurt, and therefore, the physical custody of the appellants is required.

6 The prosecution story, as it appears from the First Information Report, would show, that there was absolutely no utterances of abuses in the name of caste. It is stated that there was some incident earlier between the informant and one Dangya Raman Koli, which had taken place on

02.06.2020 at about 7.30 p.m.. Thereafter, informant says, that he and his friend Avinash Bhalerao went to Manwel at about 3.00 p.m. on 05.06.2020. His friends Sachin Sonwane and Avinash Bhalerao were washing the motorcycle in the river at about 4.30 p.m. and informant was standing nearby. At that time, said Dangya Raman Koli went to Manwel and brought about 11 persons with him. The present appellants were amongst them. Present appellant No.2 told, that they have got permission to assault informant and thereafter he was assaulted by kicks and fist blows. They were separated by one Ashok Koli and others and thereafter at about 8.30 p.m. he was again obstructed by the 12 persons. He was again assaulted by fist blows and was slapped. When his mother and others had come to rescue him, at that time, Sanjay Koli assaulted by iron rod. Appellant No.2 assaulted him by stick on his neck. Appellant No.1 assaulted him by stick on his waist. So also, appellant No.1 assaulted Sachin Sonwane on his left hand, which thereafter swollen. It is to be noted, that there is absolutely no utterance of abuse in the name of caste. Therefore, prima facie, there is absolutely no disclosure of offence under Section 3(1)(r)(s) of the Atrocities Act. Offence under Section 325, 324 of the Indian Penal Code has been registered apart from other offences under Indian Penal Code. Yet, it is in respect of hurt with weapon by means of any instrument for shooting, stabbing or cutting or any instrument which used as a weapon of offence is likely to cause death etc..

As regards the present appellants are concerned, it is stated that they have used stick. The dimensions of the stick are not before this Court nor it was, in fact, told by the informant. Merely because stick is used, we cannot say that the recovery of the same would be necessary. Further, as regards Section 325 of the Indian Penal Code is concerned, at the most it would be attributable to the act of accused Sanjay Koli. As regards the appellant No.3 is concerned, there is absolutely no role except his presence. All these aspects have not been seen by the Special Judge. Very general reasons are given without referring to the contents of the FIR, which shows lack of application of mind, and therefore, such an order cannot be allowed to sustain. Hence, following order.

ORDER

- 1 Appeal stands allowed.
- 2 The order passed by learned Additional Sessions Judge, Bhusawal in Criminal Bail Application No.347/2020 dated 20.06.2020, is hereby set aside.
- 3 The said application stands allowed.
- 4 Appellants be released on P.R. and S.B. of Rs.15,000/- each.

5 The appellants shall not tamper with the evidence of prosecution in any manner.

6 They shall not indulge in any criminal activity.

7 The appellants shall attend Yawal Police Station every Monday and Thursday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

8 Bail before concerned Additional Sessions Judge.

9 The fees of the appointed Advocate is quantified Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

(Smt. Vibha Kankanwadi, J.)

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