

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

CRIMINAL APPEAL NO.425 OF 2020

- 1 Irshad Rubab Sawar,
Age 25 yrs., Occ. Business,
R/o Sastur, Tq. Lohara,
Dist. Osmanabad.
- 2 Salman @ Salim Rubab Sawar,
Age 22 yrs., Occ. Business,
R/o as above.
- 3 Imran @ Imam Nisar Ghodesawar @ Sawar,
Age 23 yrs., Occ. Agri.,
R/o as above.

... **Appellants**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station Officer,
Lohara Police Station, Lohara,
Dist. Osmanabad.
- 2 Akash Waman Chimukle,
Age 23 yrs., Occ. Nil,
R/o Sastur, Tq. Lohara,
Dist. Osmanabad.

... **Respondents**

...

Dr. S.D. Tawshikar, Advocate for appellants

Mr. S.P. Tiwari, APP for respondent No.1-State

Mr. Abhishek Patil, 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 read with Section 439 of the Code of Criminal Procedure, 1973. The appellants have thereby challenged the order of rejection of their application under Section 439 of Cr.PC. by learned Special Judge, Osmanabad, in Criminal Bail Application No.104/2020 dated 28.07.2020.

3 Heard learned Advocate Dr. S.D. Tawshikar for appellants and learned APP Mr. S.P. Tiwari for State-respondent No.1. Though the respondent No.2-original informant was served, he remained absent, and therefore, this Court had appointed Advocate Mr. Abhishek Patil to represent the cause of respondent No.2. Heard Advocate Mr. Abhishek Patil also.

4 It has been vehemently submitted on behalf of the appellants, that the appellants were arrested and after undergoing the police custody now they are in magisterial custody. The informant has stated in his First Information Report, that when he was standing on public road at about 4.00 to 4.15 hours on 14.07.2020, the present appellants went near him, at that

time, informant asked them, as to why they are conveying his name to police. He is a very poor person. However, all the accused persons started assaulting him by kicks and fist blows. Nephew of the informant went near the informant, at that time, accused Salman had taken out some sharp weapon and when he was about to give a blow of the same to the informant, informant was pushed by his nephew; yet, the said weapon had caused injury to the left hand thumb of the informant. The present appellant No.1 took a stone by the side of the road and was about to hit it to informant, even at that time nephew had pushed informant. In the said scuffle the said stone fell on the left palm of the nephew, resulting him in injury. When people started gathering, all the three accused persons fled on their vehicle. While going present appellant No.2 shouted, “एक मराठा कापलाय आणि आता चार मांगाला कापल तर आमचं कोण काय वाकडं करणार”, so also the present appellant No.3 Imran told, “चल या मांगटयाला धर सोडू नको मार त्याला उतर गाडी खाली” and thereafter, the present appellant No.1 Irshad uttered, “आपण सगळ्या मांगाला जिवच मारु चल इथुन”. Informant then went to Police Station and lodged the report. All these contents would show, that now the physical custody of the appellants is absolutely not required. The learned Special Judge did not apply her mind. There was absolutely no documentary evidence produced before the learned Special Judge to come to a conclusion, that the present appellants would pressurize the witnesses. He, therefore, prayed for release of the present

appellants.

5 Per contra, the learned APP as well as learned Advocate representing the cause of respondent No.2 vehemently submitted that the offence, that has been, committed by the present appellants is serious. There was, in fact, no ground for any enmity for the informant and the appellants; yet, the appellants had tried to assault him by a sharp weapon and thereafter stone was used to cause the injury. The threats given by the appellants would definitely create fear in the mind of the informant, and therefore, the apprehension expressed in the impugned order is correct.

6 Before the discussion begins, it is required to be observed from the recent orders in the bail application passed by various Courts that the very purpose, for which the provisions of Section 438 and 439 of Cr.P.C. have been made, is appeared to have been forgotten. There are no proper reasons assigned while rejecting bail applications and only by citing that the offence is serious and the possibility of pressurizing the witnesses the applications are being dismissed. This is absolutely not a proper trend. In the present case the application was under Section 439 of Cr.P.C., and therefore, following factors “broadly” ought to have been considered.

- i) nature and seriousness of the offence;
- ii) the character of the evidence;

- iii) circumstances peculiar to the accused;
- iv) a reasonable possibility of the presence of the accused not being secured at the time of trial;
- v) reasonable apprehension of witnesses being tampered with;
- vi) the larger interests of the public or the State; and
- vii) similar other considerations which arise when a Court is asked to admit accused to bail in a non bailable offence.

7 Over all situation of all these factors is required to be taken and not one or two. The offence, under which the appellants have been booked is under Section 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and Section 3(1)(r)(s) of the Atrocities Act. As regards the role attributed to the present appellant No.1 is concerned, it is stated, that he had tried to assault the informant by means of stone, however, he was pushed by the nephew and thereafter the stone had hit on left palm of the nephew, causing him injury. It is very much clear from the impugned order passed by the learned Special Judge, that she has not taken note of the size of the stone and what could have been the injury. Definitely, it was not a grievous hurt, but it was only a simple hurt. Therefore, as against him individually the offence would be under Section 323 of the Indian Penal Code, which does not require, in fact, the custodial interrogation. Copy of the remand report dated 15.07.2020 has been produced, which shows, that the police themselves had

not asked for police custody. They were arrested at about 03.07 hours on 15.07.2020 and the Investigating Officer has stated, that after the arrest of the accused persons the knife like cutter has been produced by accused Salman. Though the investigation was stated to be in progress, yet, the Investigating Officer had prayed for 14 days magisterial custody and accordingly, it was granted by learned Special Judge, who was in fact, the Incharge of Adhoc Additional Sessions Judge, Omerga. Therefore, the Investigating Officer does not require the custody of the accused persons, then only on the ground that the offence is serious, it cannot be the sole ground to reject the bail application. If we consider it in that fashion, then every offence would be serious as many offences would be against the mankind. Now, as regards the livelihood of tampering or pressurizing the witnesses is concerned, there was absolutely no material, that was placed before the learned Special Judge, which will allow her to draw the inference, that there would be tampering of evidence. Literally the bail application has been rejected by giving reason in five lines.

8 While dealing with application for bail the Courts should also bear in mind the observations by the Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, 2011 (1) SCC 694,** that "Just as the liberty is precious to an individual, so is the society's interest

in maintenance of peace, law and order. Both are equally important. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.”

9 Further, note can be taken of the decision in **Sanjay Chandra vs. CBI, 2012 (1) SCC 40**, wherein the Hon’ble Supreme Court had occasion to consider the right of liberty of any citizen including an accused of a non bailable offence vis-a-vis his right to bail. It has been held that -

“The provisions of Code of Criminal Procedure confer discretionary jurisdiction on Criminal Courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. The approach adopted by the Trial Court and affirmed by the High Court, is a denial of the whole basis of the Indian system of law and normal rule of bail system. It transcends respect in the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual. Bail is the rule and committal to jail is an exception. Refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. When there is a delay in trial, bail should be granted to the accused.”

The learned Special Judge ought to have seen, that in such pandemic situation it would not have been possible for the Special Court to go ahead with the trial, and therefore, taking into consideration the allegations, specific role attributed to the present appellants, importance

ought to have been given to the personal liberty of the accused, which is enshrined in Article 21 of the Constitution of India.

10 Further, in State of Kerala vs. Raneef, (2011) 1 Supreme Court Cases, 784, the Apex Court held that, *in deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial*. Such approach by the Sessions Court i.e. cryptic orders without application of mind is unnecessarily burdening this Court.

11 Now, as regards the alleged utterances under the Atrocities Act is concerned, there was no reason for the learned Special Judge to keep the appellants in jail. Even if we consider that such offences are affecting the balance of the society, so also the harmony in the society, yet, that will not justify the rejection of the bail, that too, under Section 439 of Cr.PC. by the Special Judge. Further, non application of mind by the learned Special Judge can be seen, that it appears, that the Special Judge is posted at Osmanabad and at the relevant time, when she was dealing with the bail application, she was in-charge of the Court at Omerga. The bail application was filed in the Court of Additional Sessions Judge, Omerga. It was objected by filing say by learned Additional Public Prosecutor from Omerga. Yet, while signing the order the designation has been wrongfully put. There is a Special Judge for

the cases under Atrocities Act at Omerga, whose charge the Special Judge at Osmanabad was holding. A Judge is required to take into consideration all the aspects and apply the mind properly and judiciously. Therefore, the impugned order deserves to be set aside at the threshold. The appeal deserves to be allowed. Hence, following order.

ORDER

- 1 Appeal stands allowed.
- 2 The order passed by learned Special Judge, Osmanabad (correct designation would be, I/c Additional Sessions Judge-cum-Special Judge, Omerga) in Criminal Bail Application No.104/2020 dated 28.07.2020, 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 Bail before concerned Special Judge.

8 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.)

Donge