

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

CRIMINAL APPEAL NO.435 OF 2020
EKNATH TUKARAM SALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
CRIMINAL APPEAL NO.436 OF 2020
KRUSHNA DAGDU SALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER.

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Shri Sachin S. Shinde, Advocate for the appellant in Criminal Appeal
No.435/2020.

Shri A.K.Bhosle, Advocate for the appellant in Criminal Appeal
No.436/2020.

Shri K.S.Patil, APP for respondent No.1/ State.

Shri S.G.Ladda, Advocate for respondent No.2.

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

DATE :- 08th October, 2020

Per Court :-

1 We have heard the learned advocates for the respective sides
and the learned APP on behalf of the State.

2 We are informed that the report under Section 169 of the
Code of Criminal Procedure has been filed before the learned Special
Court at Aurangabad. The learned advocate appearing on behalf of the
informant/ respondent No.2 herein, submits that the informant would be
opposing the said report, tooth and nail. He adds that as the matter is

posted on 13.10.2020 before the Special Court, the parties could be directed to advance their submissions with regard to the said report and the learned Special Court could be requested to pass an order expeditiously.

3 We have no doubt that when an accused is in custody pending investigation and submission of the charge sheet, a report under Section 169 will have to be heard expeditiously since the accused would get a right to seek bail by virtue of the said report, which would indicate that there is no evidence against the accused.

4 The learned advocate for the appellants rightly submits that keeping in view their arrest on 11.07.2020, the Investigating Agency will have to submit its charge sheet within 90 days, failing which, an indefeasible right under Section 167 of the Code of Criminal Procedure would be available to the accused/ appellants and they would be entitled for default bail. He places reliance upon the recent view taken by the Honourable Supreme Court in Criminal Appeal No.452/2020 between **S. Kasi vs. State** decided on 19.06.2020, wherein, even the period of lockdown owing to Covid-19 pandemic was not permitted to be exempted from the 90 days when it came to the detention of the accused.

5 He, therefore, submits that if these appeals are to be disposed off, the learned Special Court may be requested to expeditiously decide the fate of the report referred to above and at the same time, the

appellants be granted liberty to apply for bail after the decision of the Special Court or exercise their right under Section 167(2) for seeking default bail.

6 Considering the above, both these Criminal Appeals are disposed off.

7 The parties at issue would address the learned Special Judge on 13.10.2020 and would endeavour to complete their submissions latest by 14.10.2020. The written submissions are permitted. After the submissions of the parties are concluded, the learned Special Judge would endeavour to decide the fate of the said report on its own merits, as expeditiously as possible and preferably on or before 20.10.2020.

8 Needless to state, the appellants may exercise their choice of seeking bail after the decision on the said report or may avail of such remedies as may be permissible in law if they are aggrieved by the decision of the Special Court, as well as their right to seek default bail, as and when the 90 days are over.

9 Considering the time frame involved, the learned Registrar (Judicial) of this Court is requested to convey this order to the learned Special Judge [under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act] at Aurangabad.