

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 519 OF 2020

Balasaheb s/o Trimbakrao Ghuge,
Age 40 years, Occupation Agriculture,
R/o Selsura Tq. Kalamnuri
Dist. Hingoli.

**...Appellant
(Original Accused)**

VERSUS

1) The State of Maharashtra,
Through Police Station Officer,
Kalamnuri Police Station,
Kalamnuri Tq. Kalamnuri Dist.Hingoli.

2) Vandana Subhash Paikrao,
Age 40 years, Occupation Service,
R/o Selsura Tq. Kalamnuri
Dist. Hingoli.

**...Respondents
(No.2 Orig.informant)**

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Advocate for Appellant : Mr. S. S. Rathi.
APP for Respondent No.1-State : Mr. S. W. Munde.
Advocate for Respondent No.2 : Mr. K. S. Solanke
(Appointed)

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**CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 21-10-2020.**

JUDGMENT :

1. Heard both sides.
2. Since arguable points are made, the appeal is **admitted**.
3. By consent the appeal is taken up for final disposal.

4. Present appeal has been filed under Section 14-A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act') challenging the order of rejection regular bail under Section 439 of the Code of Criminal Procedure in Criminal Miscellaneous Application No.277 of 2020, by in-charge Additional Sessions Judge-1/ Special Judge, Hingoli on 24-09-2020. The appellant is apprehending his arrest in connection with Crime No.318 of 2020, registered with Kalamnuri Police Station Tq. Kalamnuri Dist. Hingoli for the offences punishable under Section 353, 506 of the Indian Penal Code and Section 3 (1) (3) (s) (2)(va) of the Atrocities Act.

5. Heard learned Advocate Mr. S. S. Rathi for appellant and learned Additional Public Prosecutor Mr. S. W. Munde for respondent No.1-State, and learned appointed Advocate Mr. K. S. Solanke for respondent No.2- original informant.

6. It has been vehemently submitted on behalf of the appellant that, the learned Special failed to consider the basic rules. It was the regular bail under Section 439 of the Code of Criminal Procedure which was to be adjudicated. Custodial detention of the appellant was not at all necessary. The learned Special Judge failed to consider that the offence had allegedly taken place on 11-09-2020 whereas

the crime was registered at about 10.08 p.m. on 13-09-2020. It was just to add charges under the Atrocities Act an incident dated 12-09-2020 appears to have been created. There is total concoction of the story. The alleged incident to attract the Atrocities Act was not at all within public view. Even the police had not asked for police custody but directly judicial custody has been prayed. There are no criminal antecedents of the appellant and, therefore, the appeal deserves to be allowed.

7. Per contra, the learned Additional Public Prosecutor as well as learned Advocate appointed to represent the cause of respondent No.2 strongly opposed the application. They supported the reasons given by the learned Special Judge. The informant who is a 'Asha Worker', was on CORONA duty. The brother of the accused had tested CORONA positive and, therefore, she had gone to prepare list of the family members and those who were in contact with the brother of the appellant. She was unnecessarily resisted. Her register was snatched and the list which was prepared by her was torn. The acts did not stop there, the informant when at her house along with son and daughter, the appellant had gone in front of her house and abused her in the name of caste. The offence which has been committed by the appellant is anti social, immoral and threat

against a woman, therefore the order passed by the learned Special Judge is correct.

8. At the outset, it has to be born in mind that the appellant was arrested and what application he had filed for bail, was under Section 439 of the Code of Criminal Procedure and, therefore, the criteria which is required to be considered for a regular bail, should have been considered by the learned Special Judge. He has given a very cryptic order, and without any evidence it is observed that, the act of the appellant creates terror in the village. No doubt, it has been rightly observed that those authorities who are taking pains from spreading the virus, should be protected as they are doing the said work at the cost of their health, but then at the same time it should be born in mind that jail is exception and bail is rule. Here the incident narrated in the First Information Report is stated to have occurred on two dates. The informant has not immediately lodged any report regarding incident that had taken place on 11-09-2020. Then the story comes that, at about 10,00 p.m. on 12-09-2020 another incident insulting the informant in the name of her caste has taken place. For the incident dated 11-09-2020 there was no imputations about caste though it is stated that the informant and the accused are from the same village and knew each other even

since prior to the incident. Therefore, the said delay will have to be taken note of. Now the custody of the appellant is not at all required and by imposing conditions, he deserves to be released on bail. Hence, following order.

ORDER

- 1) The appeal stands allowed.
- 2) The impugned order passed in Criminal Miscellaneous Bail Application No.277 of 2020, by learned Special Judge, Hingoli on 24-09-2020, is hereby set aside. The said application stands allowed.
- 3) The appellant be released on PR and SB of Rs.15,000/- (in words rupees fifteen thousand only).
- 4) The appellant shall not indulge in any criminal activity nor should try to tamper with the evidence of the prosecution in any manner.
- 5) The appellant shall attend concerned police station on every Wednesday between 10.00 a.m. To 12.00 p.m., till filing of charge-sheet.
- 6) Bail before Special Judge.
- 7) The fees of the appointed advocate is quantified at Rs.5000/- (in words rupees five thousand only), to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.