

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.531 OF 2020

1 Sopan Mohan Bhagat,
Age 40 yrs., Occ. Reporter & Agri.
(**withdrawn**)

2 Mohan Vitthal Bhagat,
Age 68 yrs., Occ. Agri.,

Both are r/o Devgaon, Tq. Newasa,
Dist. Ahmednagar.

... Appellants

... **Versus** ...

1 The State of Maharashtra
For Newasa Police Station,
Tq. Newasa, Dist. Ahmednagar
Through Police Inspector.

2 Sagar Vasant Netke,
Age 23 yrs., Occ. Labour,
R/o Devgaon, Tq. Newasa,
Dist. Ahmednagar.

... Respondents

...

Mr. A.S. Gandhi, Advocate for appellants

Mrs. R.P. Gaur, APP for respondent No.1

Mr. A.N. Ayachit, Advocate (appointed) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27th NOVEMBER, 2020

JUDGMENT :

1 **Admit.**

2 Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to challenge the dismissal of application for bail filed under Section 438 of the Code of Criminal Procedure by the present appellant bearing Bail Petition No.279 of 2020 by learned Additional Sessions Judge/Special Judge, Newasa, Dist. Ahmednagar on 28.09.2020. The applicants were apprehending their arrest in connection with Crime No.544/2020 dated 10.08.2020 registered with Newasa Police Station, Dist. Ahmednagar for the offence punishable under Section 323, 324, 504, 506 read with Section 34 of the Indian Penal Code, under Section 4/25 of the Arms Act and under Section 3(10)(r), 3(1)(s), 3(2)(c-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3 It will not be out of place to mention here itself that the appeal stood withdrawn as against appellant No.1 in view of the fact that he was arrested by Police and then he has been released on regular bail. Therefore, the present appeal is restricted to the appellant No.2 only.

4 Heard learned Advocate Mr. A.S. Gandhi for appellant, learned

APP Mrs. R.P. Gaur for respondent No.1 and learned appointed Advocate Mr. A.N. Ayachit for respondent No.2.

5 It has been vehemently submitted on behalf of the appellant No.2 that the informant has lodged First Information Report with concocted story. In fact, the incident is stated to have taken place on 14.03.2020 and the First Information Report has been lodged on 10.08.2020. The huge delay has not been explained. The informant is taking disadvantage of his caste and with revengeful attitude he has implicated the appellant. Perusal of the FIR would show that no specific role is attributed to the appellant. Further the abuses are stated to have given in chorus. The learned Special Judge erred in not considering the facts properly. Learned Advocate for the appellant, therefore, prayed for release of the appellant No.2 on bail.

6 Learned APP as well as learned appointed Advocate for the respondent No.2-informant strongly opposed the application. It was submitted that mere delay will not create any right in favour of the appellant. There are eye witnesses to the incident.

7 At the outset, there appears to be a considerable delay in lodging the First Information Report. The incident is stated to have taken place on 14.03.2020 and the First Information Report is lodged on 10.08.2020. The

informant states that due to his mental condition he had not earlier lodged the report. Whether that would be a sufficient ground, would be considered at the time of final hearing. However, the apparent facts at this stage is that there is delay. No doubt, there appears to be some litigation between the present appellants and the informant, which has been taken note of by the Special Judge and it is one of the grounds then to reject the anticipatory bail application. Yet, each case will have to be considered on its own merits also. Here, in this case, as regards the appellant No.2 is concerned, there is no separate act attributed to him, whatever alleged utterances in the name of caste are there, they are stated to be in chorus with appellant No.1. The abuses cannot be in chorus. This Court has time and again held in **Shashikant Ramhari Tambe and others vs. State of Maharashtra, 2008 ALL MR (Cri.) 2132**, and therefore, case is made out to allow the appeal. Hence, following order.

ORDER

1 The appeal stands allowed.

2 The order passed by learned Additional Sessions Judge/Special Judge, Newasa, Dist. Ahmednagar in Bail Petition No.279/2020 dated 28.09.2020, is hereby set aside. Said application stands allowed.

3 In the event of arrest of the appellant No.2 viz. Mohan Vitthal Bhagat, in connection with Crime No.544/2020 dated 10.08.2020 registered with Newasa Police Station, Dist. Ahmednagar for the offence punishable under Section 323, 324, 504, 506 read with Section 34 of the Indian Penal Code, under Section 4/25 of the Arms Act and under Section 3(1)(r), 3(1)(s), 3(2)(c-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, be released on P.R. and S.B. of Rs.15,000/-.

4 The appellant No.2 shall not indulge in any criminal activity and shall not tamper with the evidence of prosecution, in any manner, till filing of charge sheet.

5 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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