

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

CRIMINAL APPEAL NO.134 OF 2021

RUSHIKESH DATTATRAYA TAWARE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Appellant : Shri Hange Rajendra G.

APP for Respondent 1 : Shri K.S. Patil

Advocate for Respondent 2 : Shri C.V. Dharurkar

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CORAM : RAVINDRA V. GHUGE

&

B. U. DEBADWAR, JJ.

DATE :- 05th April, 2021

Per Court :-

1. By this appeal, the appellant/ accused No.1 seeks regular bail in connection with FIR No.43/2021 registered with the Shivaji Nagar Police Station, Beed for the offences punishable under Sections 307 r/w 34 of the Indian Penal Code and Section 3(1)(r) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. He has been arrested on 07.02.2021 at 15:47 hours and as the weapon used in the crime was recovered from him, he has been in magisterial custody till today. The Investigating Officer himself has sought magisterial custodial remand (MCR) and had not pressed for police custodial remand (PCR).

2. We have considered the strenuous submissions of the learned

advocate for the appellant, the learned advocate on behalf of the informant/ victim and the learned prosecutor on behalf of the State. With their assistance, we have gone through the FIR, arrest form and the documents placed before us. Since the trial is pending, we do not intend to make any observation on the rival claims of the informant and the accused. We are today dealing with an appeal for regular bail.

3. The appellant/ accused has been charged with having committed the offence punishable under Section 307 r/w 34 of the Indian Penal Code. Since the informant belongs to the reserved category, Sections 3(1)(r) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been invoked. As the appellant is behind the bars, the bar of Section 18 of the 1989 Act would not curtail our jurisdiction.

4. The learned advocate for the informant has vehemently opposed this appeal contending as under :-

(a) Antecedents of the accused are not clean.

(b) The accused is notorious for indulging in acts of aggression against minors in the colony.

(c) The accused was aware that the informant belongs to the reserved category.

(d) There is every likelihood of the accused tampering with the evidence.

(e) Since the accused has no respect for law, there is possibility that he might repeat such acts.

5. The learned advocate for the appellant/ accused submits that his antecedents are clean and it is inappropriate to brand him as being notorious. He is not in the habit of showing aggression against minors. This Court may impose appropriate conditions on the appellant and he would abide by the bail conditions.

6. We have perused the colour photographs of the victim. He has suffered extensive injuries to his skull and forehead between the eyes and the said wound being very close to his left eye. He has been given extensive stitches at different places on his skull and prima facie, it appears that he was fortunate that his skull was not crushed, which would have, probably, been disastrous for him. We also cannot ignore that the I.O. did not pray for PCR for the appellant as the iron rod, which is commonly called as “tommy”, was recovered from the appellant/ accused. He had sought MCR and the appellant is in magisterial custody since 07.02.2021. Going by these facts, it appears that the I.O. himself did not desire the detention of the appellant in PCR.

7. Considering the above and since we find that the custodial interrogation of the appellant/ accused may not be further required, his prayer for regular bail could be accepted by imposing strict conditions.

8. As such, this Criminal Appeal is allowed and the impugned order dated 26.02.2021 passed by the learned Trial Court is set aside keeping in view the passage of time and the facts recorded above. The appellant/ accused (Rushikesh Dattatraya Taware) shall, therefore, be released on bail on the following conditions :-

(a) The appellant shall tender a solvent surety of Rs.50,000/- (Rupees Fifty Thousand) and a PR bond of the like amount.

(b) He shall report to the Shivajinagar Police Station, Beed on every Monday, Wednesday and Friday in between 11:00 AM to 02:00 PM, till the commencement of the trial.

(c) His attendance shall be recorded by the Station House Officer in the station diary, by obtaining his signature.

(d) The appellant shall not enter Gajanan Nagar, Shahu Nagar and Shivaji Nagar in Beed city, until the commencement of the trial.

(e) The appellant shall not attempt to meet or contact, directly or indirectly, the victim or his family members or his relatives or such persons, who are likely to be witnesses in the matter and shall not tamper with evidence.

9. Violation of any of the above conditions would be a good ground for cancellation of bail.