

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.144 OF 2021

Biru @ Balasaheb Kisanrao Holkar,
Age 42 years, Occupation Labour,
R/o Chausala Tq. Dist. Beed.

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

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Neknoor Police Station,
Tq. Dist. Beed.
- 2) Sangeeta w/o Navnath Sonwane,
Age 49 years, Occupation Household,
R/o Chausala Tq. Dist. Beed.

...Respondents

.....
Advocate for Appellant : Mr. N. R. Thorat
APP for Respondent No.1-State : Mr. A. M. Phule
Advocate for Respondent No.2: Mr.Anuj Fulfagar (**Appointed**)
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving The Judgment :
09-04-2021**

**Date of Pronouncing The Judgment :
22-04-2021.**

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 passed below Exhibit 22 i.e. bail application of accused No.4 in Special (Atrocity) Case No.04 of 2020 by learned Special Judge/ Learned Additional Sessions Judge, Beed on 02-03-2021 ; thereby rejecting his bail application under Section 439 of Code of Criminal procedure.

5. Heard learned Advocate Mr. N. R. Thorat for appellant, learned Additional Public Prosecutor Mr. A. M. Phule for respondent-State, and learned appointed Advocate Mr. Anuj Fulfagar for original informant respondent No.2.

6. It has been vehemently submitted on behalf of the appellant that the learned Special Judge failed to consider that it was in fact a regular bail that was sought by the present appellant. He was arrested and has undergone the necessary custody that was granted by the Special Judge. A fact was take a note of that the appellant was granted interim bail by order below Exhibit 05 dated 26-05-

2020. Duration of the said interim bail was 45 days, however before the expiry of that 45 days neither there was extension nor the application was filed in any manner to extend the said interim bail. After the expiry of 45 days, the appellant did not surrender and, therefore, it is stated that the Court was required to put the police machinery in motion and arrest the appellant, on this ground the bail application has been rejected. The earlier bail application filed by him before the same authority has also been rejected on the ground that no documentary evidence in respect of ill-health has been produced, this appears to be a wrong approach of the learned Special Judge. When the custody of the appellant is not required now for the purpose of investigation taking into consideration the fact that the investigation is over and charge-sheet is also filed, his application ought to have been allowed. Further the learned Special Judge also failed to consider that there is long standing rivalry between the informant and the co-accused. Co-accused No.1 to 3 are the neighbours of the informant. Merely because the present appellant is their relative, he has been roped in. There was no reason for him to commit any such kind of crime, he deserves to be released on bail.

7. Per contra, the learned Additional Public Prosecutor as well as the learned appointed Advocate to represent the cause of the respondent No.2 strongly opposed the application and submitted that there is ample evidence against the present appellant. Even prior to the lodging of the report in this case, about four to five months earlier, one more offence under Atrocities Act was lodged against co-accused Latabai, Sagar and present appellant for pelting stones on the house of the informant and causing injuries to the daughter-in-law of the informant. Now also the informant was severely beaten by pelting stones and by kicks and fists blows. Further, when informant's son Lakhan tried to intervene, at that time present appellant had pushed him on bricks and assaulted him on his back with bricks. If his Medico Legal Certificate is seen then it shows that he had sustained contusion on left fronto temporal region and there were abrasions about the said injury. He was referred to Civil Hospital, Beed for further treatment and the final opinion has not been given. Other two persons have also received injuries. It is very much certain that even when earlier offence was registered against them under the Atrocities Act ; the appellant and co-accused had the knowledge about the caste of the informant and they had behaved in such a manner only because the informant and her

family members are the members of the Scheduled Caste. Therefore, when ample evidence is on record, the appellant does not deserve any sympathy.

8. At the outset, the criteria for grant of regular bail is different. The bar under Section 18 of the Atrocities Act is only for an application under Section 438 of Code of Criminal Procedure. Here, the prosecution story is that earlier there was atrocity case against co-accused Latabai, Sagar and present appellant which was lodged by the informant's side. Thereafter, it is stated that another incident had taken place at about 07.30 p.m. on 22-12-2019 when informant, her daughter-in-laws and son Lakhan were in the house. It is stated that accused Sagar and Savita residing in their lane came on motorcycle and started disputing as to why the informant has lodged report in the police station against them. By saying so they were calling informant outside the house. In the meantime accused Latabai and present appellant also came. They took the stones and bricks of the construction and started pelting it. Accused Savita pelted stones towards Lakhan, accused Sagar pelted stones towards informant. Sagar had also assaulted daughter-in-law of the informant, and it is stated that, when her another son Pravin got

knowledge about the incident, he came there and at that time the present appellant had pushed him on the bricks and was assaulted by bricks resulting in covert injury to Pravin. Thereafter when the informant and others were proceeding towards police station, it is stated that, accused Sagar had torn the blouse of the informant on road. Further it is stated that all this has been done with knowledge that the informant and her family members are the members of Scheduled Caste.

9. The said contents of the First Information Report are also echoed in the statement of Lakhan, Pravin, Vishal who are the sons of informant and Vidya who is wife of Vishal. All of them, as regards the role attributed to the present appellant is concerned, state that he had assaulted Pravin by pushing and assaulting by bricks, resulting in covert injury. There is no Medico Legal Certificate of Pravin on record. He himself is also saying only about covert injury. The other acts are attributed to the co-accused. As regards the present case is concerned, investigation is over and charge-sheet is also filed. Perusal of the First Information Report as well as statements of the witnesses under Section 161 of Code of Criminal Procedure would show that, none of them are saying abuse/ insult in

the name of caste by the co-accused. Under such circumstance, how far the offence under Section 3 (1) (r) and 3 (1) (s) of the Atrocities Act are attracted, is a question. Further, nothing is to be recovered at the instance of the present appellant, therefore definitely when this is a regular bail, he deserves to be released on bail as it would take long time to stand his trial.

10. The only point that prevailed upon the learned Special Judges appears to be that after the expiry of the said 45 days of interim bail, the present appellant had not surrendered nor got extension. The appellant has not produced the copy of the interim bail that was granted to him earlier on 26-05-2020, but suffice it to say that it appears to be in view of the directions given by the High Power Committee Maharashtra in pursuant to the *suo motu* directions given by Hon'ble Apex Court in respect of under trial prisoners. This Court has already taken a view that the wordings in those directions given by both the authorities were not restricted to 45 days only, but it would be initially for 45 days and it would have been continued till the notification under the Disaster Management Act had come to an end. In fact, that notification is still in operation, it has been extended from time to time as regards Maharashtra is concerned.

Certainly it was not taken back or cancelled after 45 days from 26-05-2020. It was not expected that the appellant should have filed an application for extension of that order. Further even if it is accepted that he had not got that order extended and then the Special Judge was required to put the police machinery in motion and arrest the accused, but then he had come with a contention that he was ill and bedridden. He could not produced documents to that effect but then there was some medical document on record of his mother which showed that she was ill and her medical treatment was going on, that ground was sufficient. When the physical custody of the appellant is not required for the purpose of investigation and the trial is less likely to commence within a reasonable period, the said bail application ought to have been allowed by the learned Special Judge. Under those circumstances, this appeal deserves to be allowed by setting aside the impugned order. Hence, following order.

ORDER

- 1) Appeal stands allowed.
- 2) Order dated 02-03-2021, passed below Exhibit 22 by learned Special Judge/ Additional Sessions Judge, Beed, in Special (Atrocity) Case No.04 of 2020, is hereby

set aside. The said application stands allowed.

3) The appellant /accused Biru @ Balasaheb Kisanrao Holkar, in Special Case (Atrocities Act) 04 of 2020, pending before learned Special Judge/ Additional Sessions Judge, Beed, be released on PR and SB of Rs.15,000/- (fifteen thousand).

4) The appellant shall not indulge in any criminal activity and he shall not tamper with the evidence of prosecution in any manner.

5) Bail before Trial Court.

6) 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/-