

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

39 CRIMINAL APPEAL NO. 412 OF 2021

1. Shaikh Nayyum S/o. Shaikh Mahemood, ...**APPELLANTS**
Age-21 years, Occu-Labour,
R/o. At Wajegaon Nanded,
Tq. & Dist. Nanded
2. Shaikh Feroz S/o. Shaikh Ishaq,
Age-24 years, Occu-Labour,
R/o. At Wajegaon Nanded,
Tq. & Dist. Nanded

VERSUS

1. The State of Maharashtra, ...**RESPONDENTS**
Through the Police Inspector,
Nanded Rural Police Station,
Tq. & Dist. Nanded
2. Dashrath Hari Bhadre
Age-32 years, Occu-Driver,
R/o. Panchshil Nagar, Wajegaon,
Tq. & Dist. Nanded

Mrs. S. S. Kazi, Advocate for the appellants
Mrs. G. L. Deshpande, APP for the respondent/State
Mr. Sameer Nigam, Advocate for the respondent No2 (appointed)

CORAM : SURENDRA P. TAVADE, J.

DATE : 04-10-2021

P. C.

. The appellants are praying for bail under Section 439 of

the Code of Criminal Procedure in Crime No. 548 of 2021 registered with Nanded Rural Police Station, Nanded for the offences punishable under Sections 143, 147, 148, 323, 324 and 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r) and 3(1)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. It is contended that the appellant No.1 came to be arrested on 04-08-2021, the appellant No.2 came to be arrested on 05-08-2021 and since then they are in judicial custody. It is contended that one Dashrath lodged the FIR on 03-08-2021 wherein it is alleged that on 03-08-2021 at about 02.00 pm he was in the house. The appellant No.1 threw his mobile in the house of the informant and asked the wife of the informant to speak with him. Therefore, informant came out of the house and asked the explanation to the appellant No.1, as to why he threw the mobile inside the house. Over this, the appellant No.1 abused the informant over his caste. It is alleged that the appellant No.1 called his friend and thereafter, both of them assaulted the informant by fist and kick blows. It is alleged that cousin of informant came to his rescue. But, he was also assaulted by the appellant No.1 by stones and caused him bleeding injury. It is also alleged that the appellant No.2 and his friend assaulted the informant and cousin of informant by fist and kick blows and threatened to kill them. Hence, the informant lodged the FIR against the appellants and others.

3. The applicants submitted that the application for bail before the trial court came to be rejected on the ground that the applicants and the informant are residing in the same village and there is possibility of breach of law and orders situation within the area of their residence.

4. It is contended that the applicants are in judicial custody since last two months. The investigation is almost completed. No custodial interrogation of the applicants is required. Nothing is to be recovered at the instance of applicants and no purpose would be served by keeping the the applicants behind the bar. Hence, it is prayed to release the applicants on bail.

5. On the other hand learned APP submits that the applicants had assaulted the informant and his cousin. Similarly, they abused informant over his caste. The appellant No.1 had threatened to kill the informant. Therefore, there is possibility of further complications in the matter and there is possibility of tampering of the evidence, if the applicants are released on bail.

6. The learned counsel for the respondent No.2 also reiterated the said arguments. He submits that there are six accused persons. Two persons are arrested. Other are absconding. There is threat to the life of the informant, therefore, it is prayed that the application for bail be rejected.

7. Heard learned counsel for the appellants and learned APP and learned counsel for the respondent No.2.

8. Perused the impugned order dated 13-08-2021. It appears that the appellants came to be arrested on 04-08-2021 and 05-08-2021 respectively. They were remanded police custody and they are taken in judicial custody. The bail application is objected on the ground that, the appellant No.1 had threatened the informant to kill and it is also contended on behalf of the prosecution that the informant and witnesses are residing in one lane. Therefore, there is possibility of threatening of witnesses and informant cannot be ruled out. It is true that the appellants and informant are residing in the same locality. Therefore, there is substance in the submission of prosecution that the appellants may threaten the informant and witnesses. The appellants are in jail since last two months. The investigation also must have been over. Therefore, the appellants are not required for interrogation and investigation. The apprehension of prosecution that the appellants may threaten the informant and the witnesses can be taken care by imposing the stringent conditions. Except the offences under the Atrocities Act, other offences are not serious in nature. Therefore, no purpose would be served by keeping the appellants behind the bar. Thus, the appellants are entitled for bail. Hence, I pass the following order:

ORDER

- i. The appeal is allowed.
- ii. The appellant No.1- Shaikh Nayyum S/o. Shaikh Mahemood and the appellant No.2- Shaikh Feroz Shaikh Ishaq be released on regular bail in connection with the Crime No. 548/2021 dated 03-08-2021 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 143, 147, 323, 324 and 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on executing PR and SB bond in the sum of Rs. 25,000/- [Rupees Twenty Five Thousand] each with one or more sureties in the like amount, on following conditions:
 - (a) The appellants are directed to attend the Nanded Rural Police Station, Dist. Nanded once in a week namely every Monday between 10.00 am to 12.00 noon till filing of the charge-sheet.
 - (b) The appellants are directed not to tamper with the prosecution witness in any manner.

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iii. Mr. Sameer Nigam, Advocate was appointed to represent the respondent No.2 through Legal Aid. I appreciate his sincere efforts in conducting the matter. I quantify his fees at Rs.2000/-.

iv. The criminal appeal stands disposed of.

[SURENDRA P. TAVADE, J.]

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