

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

CRIMINAL APPEAL NO. 429 OF 2021

Durgesh S/o Bhanudas Mahajan ... Appellant

Versus

The State of Maharashtra
and another ... Respondents

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Mr. Yogesh G. Somani, Advocate for the appellant
Mr. K.S. Patil, APP for Respondent No.1 / State
Mr. Ujwal S. Patil, Advocate for Respondent No.2.

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**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 20th OCTOBER, 2021

PER COURT:-

1. The appellant is seeking pre-arrest bail in connection with Crime no.0180 of 2021 registered with Bhadgaon Police Station, Taluka Bhadgaon, District Jalgaon for the offences punishable under Sections 394, 294, 279, 352, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (for short, IPC) and Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. His application with similar prayer came to be rejected by the Additional Sessions Judge, Jalgaon by order below Exhibit-1 in Criminal Bail Application No.656 of 2021 dated 18.08.2021. The appellant has preferred this appeal in terms of the provisions of Section 14A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the said order of rejection of the bail application no. 656 of 2021.

3. The learned counsel for the appellant submits that on the basis of the complaint dated 04.08.2021 lodged by respondent no.2, the aforesaid crime came to be registered against the appellant. Learned counsel submits that it has been alleged in the said complaint that the incident occurred on 01.08.2021 at about 10.30 a.m. in front of Shani Mandir near situated adjacent to Grampanchayat. Learned counsel submits that respondent no.2-informant has lodged the complaint in the concerned police station in respect of the incident dated 01.08.2021 at about 10.00 a.m. and on the basis of his complaint, the N.C. came to be registered for the offences punishable under Sections 323, 504, 506 of the IPC against the appellant. Learned counsel submits that the said N.C. incident

allegedly occurred in front of the temple of God Datta and the incident was reported to the police at about 13.14 hours. Learned counsel submits that so far as the incident allegedly occurred on 01.08.2021 at about 10.30 a.m., which is the subject matter of the present FIR dated 04.08.2021 is concerned, it has been alleged that the appellant herein has assaulted respondent no.2-informant with the help of sharp cutter and caused the injuries on the various parts of his body and further snatched the golden chain from his neck. Learned counsel submits that in the N.C. complaint, which is filed at 13.14 hours, there is no whisper about this incident. Learned counsel submits that even though the incident which is the subject matter of the present FIR allegedly occurred on 01.08.2021, the complaint came to be lodged on 04.08.2021 without explaining the delay. Learned counsel has pointed out that even though the respondent no.2-informant allegedly sustained the injuries by sharp cutter, however, he came to be examined by the Medical Officer, Rural Hospital, Bhadgaon on 03.08.2021, wherein the injuries on his person shown as “fresh” injuries. Learned counsel submits that there are no allegations about the abuses on caste. Learned counsel submits that the

appellant is a young person having no antecedents. The appellant is the student of second year of D. Pharm course and taking education at Shri Deepchand Fakirchand Lodha Pharmacy College, Neminagar, Chandwad, District Nashik. The appellant is ready to abide the conditions, if imposed by this Honourable Court. The appellant be released on anticipatory bail.

4. The learned Counsel for respondent no.2/informant submits that the specific allegations are made in the complaint that respondent no.2 was assaulted by the appellant and caused injuries on his person with the help of sharp cutter. Respondent no.2-informant had sustained the injuries on his shoulder, abdomen, neck etc. Further, there are specific allegation that the appellant had snatched the golden chain from the neck of respondent no.2-informant. Learned counsel submits that after this incident is over, the father of the appellant has abused respondent no.2-informant by referring his caste at public place. Learned counsel submits that the appellant is not entitled for pre-arrest bail.

5. The learned A.P.P. submits that the investigation is in progress and the custodial interrogation of the appellant is required to recover the golden chain. The injury certificate issued by the Medical Officer, Rural Hospital, Bhadgaon clearly indicates that respondent no.2 has sustained the linear incised wound on the abdomen, both hands and on the other parts of the body. Learned App submits that there are three eye witnesses to the incident. The appellant is not entitled for pre-arrest bail.

6. We have carefully gone through the investigation papers and also the copy of the N.C.R. submitted alongwith this appeal at page 37-A. It appears that in respect of incident occurred on 01.08.2021 at about 10.00 a.m., respondent no.2-informant herein has reported the incident to police at about 13.14 hours. So far as the complaint in the present crime is concerned, the said incident allegedly occurred on 01.08.2021 at about 10.30 a.m. for which the complaint came to be lodged in the concerned police station on 04.08.2021 without explaining the delay. Furthermore, till the incident which is the subject matter of the N.C.R. reported to the police by respondent no.2, the present incident had also taken place, however, there is no

whisper in the said N.C.R. complaint about the incident, which is the subject matter of the present crime.

7. On careful perusal of the allegation made in the complaint on 04.08.2021, it appears that respondent no.2-informant has approached the concerned police station on the same day i.e. on 01.08.2021. It has been stated in the complaint that the said police station has given police yadi and on the basis of that police yadi, respondent no.2-informant has approached to the Rural Hospital, Bhadgaon and he was subjected to the medical examination. However, on perusal of the injury certificate, which is the part of the investigation papers, it appears that respondent no.2-informant came to be examined by the Medical Officer, Rural Hospital, Bhadgaon on 03.08.2021 and there is no reference to the police yadi in the said injury certificate. Furthermore, though the incident allegedly occurred on 01.08.2021 at about 10.30 a.m. and though respondent no.2-informant was subjected to medical examinations on 03.08.2021, the age of the injuries in the said injury certificate is shown as “fresh” injuries. It is for the Special Court to consider the effect of the age of injuries and the certificate issued by the Medical Officer, Rural Hospital,

Bhadgaon; so also the inconsistency between the N.C.R. complaint and present complaint. Furthermore, we find no allegations against the present appellant for giving abuses to the informant by referring his caste. However, the appellate has made out a case for pre-arrest bail. Hence, we proceed to pass the following order:-

ORDER

- (i) Criminal Appeal is hereby allowed.
- (ii) In the event of arrest of appellant Durgesh S/o Bhanudas Mahajan in connection with Crime No.0180 of 2021, registered with Bhadgaon Police Station, Taluka Bhadgaon, District Latur, for the offences punishable under Sections 394, 294, 279, 352, 323, 504, 506 read with Section 34 of IPC and Sections 3(1)(r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he be released on bail on furnishing P.B. of Rs.20,000/- (Rupees Twenty Thousand) with one solvent surety of the like amount, on the following conditions :-

- (a) The appellant shall not tamper the prosecution witnesses in any manner.

(b) The appellant shall not enter within the local limits of village Kajgaon, Taluka Bhadgaon, District Jalgaon till the investigation in connection with crime no. 0180 of 20121 is completed.

(c) The appellant shall attend the concerned Police Station once in a week on every Sunday between 8.00 a.m. to 11.00 a.m. and he shall also make himself available as and when called by the Investigating Officer for making further investigation till filing of the charge-sheet.

(iii) Criminal Appeal no.429 of 2021 is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

[V. K. JADHAV]
JUDGE

S.P. Rane