

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

CRIMINAL APPEAL NO.686 OF 2020

**GANESH SHRIRAM NITURE
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

...
Advocate for the Appellant : Shri Deshmukh Javed Abdul H.
APP for Respondent 1 : Shri K.S. Patil
Advocate for Respondent 2 : Shri S.S. Panale (appointed)
...

**CORAM : RAVINDRA V. GHUGE
&
B. U. DEBADWAR, JJ.**

DATE :- 02nd February, 2021

Per Court :-

1. On 22.01.2021, this Court (Coram : Dipankar Datta, CJ and Ravindra V. Ghuge, J.) had passed the following order :-

- “1. Having regard to the fact that a co-ordinate Bench of this Court, by its order dated 22nd December, 2020 has released Mohan Bajrangsingh Thakur on bail on the conditions mentioned in paragraph 11 thereof and that the appellant, a co-accused, stands on similar footing, we direct that no coercive action against the appellant shall be taken by the Investigating Ofcer till 29th January, 2021.*
- 2. Appeal shall be listed on 28th January, 2021 before the appropriate Bench.*
- 3. In the meanwhile, a copy of this appeal may be served on the respondent no.2.*
- 4. In addition thereto, in the light of Section 15-A(3) and (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Investigating Ofcer shall intimate the respondent no.2 of the*

pending proceedings and shall serve a copy of this order on the said respondent.”

2. With reference to the First Information Report in Crime No.361/2020 registered on 23.10.2020 with the Mukhed Police Station, Taluka Mukhed, District Nanded, there are four accused, namely, Ranjit Thakur, Ganesh Thakur, Mohan Thakur (wrongly named as Pravin Thakur) and Ganesh Niture (present appellant). Vide order dated 22.12.2020 in Criminal Appeal No.624/2020 filed by Mohan Thakur, we had considered the respective roles played by these four accused and had come to the conclusion on the basis of the record before us that Ranjit Thakur and Ganesh Thakur were, prima facie, responsible for using weapons in assaulting the complainant as well as Madhav Gadhave, who had tried to rescue the complainant. These two persons, namely, Ranjit Thakur and Ganesh Thakur had then attacked even Madhav Gadhave and had fractured his bone.

3. In comparison to the said role played by these two persons, we noticed that Mohan Thakur and Ganesh Niture had participated in the assault to the extent of using their fists and giving kick blows to the complainant and Madhav Gadhave. We then considered that all these four accused belonged to a completely different village i.e. Hipparaga whereas, the complainant and his friend Madhav Gadhave are residents of village Jamb, Taluka Mukhed, District Nanded. The accused had no acquaintance

with these two victims and had come face to face for the first time. On these premises, we concluded that there was no scope for the accused to know the tribes or castes of the two victims when they did not know them in the first place. The prime accused Ranjit Thakur and Ganesh Thakur, as per the version of the learned prosecutor and the learned counsel appearing for respondent No.2/ complainant, have been arrested and are behind the bars. Prima facie, we have seen that they had played a major role and had also used weapons.

4. The learned counsel for the complainant and the learned prosecutor have vehemently opposed this appeal contending that Section 34 of the Indian Penal Code has been attracted. As such, if two prime accused are eventually convicted, these two accused will also suffer the same fate.

5. Though the learned prosecutor and the learned counsel for respondent No.2/ complainant are sound in their submissions, at this stage of considering the anticipatory bail application, we are required to assess as to whether, any of the accused need to be detained in custody and whether, their custodial detention is necessary for investigating the crime. Prime accused are already behind the bars and who appear to have played a major role in attacking the complainant with iron rods.

6. Since we find that the role played by the present appellant Ganesh Niture is of the same nature as of Mohan Thakur (Pravin Thakur),

we allow this Criminal Appeal and we hold that in the event of arrest of the appellant (Ganesh Niture), he shall be released on bail on the same conditions imposed on Mohan Thakur, which read as under :-

- (a) The appellant (Ganesh Niture) shall furnish a solvent surety of an amount of Rs.50,000/- (Rupees Fifty Thousand) with a PR. Bond and a surety for the like amount.
- (b) He shall not enter the village Jamb in which the complainant resides along with Madhav Gadave. This condition shall be strictly complied with, keeping in view that the distance between the village of the appellant (Hipparga) and the village of the complainant (Jamb) is only five Kms.
- (c) He shall mark his attendance with the Mukhed Police Station every Tuesday and Friday, in between 10.00 a.m. and 1.00 p.m., until filing of the charge-sheet.
- (d) The SHO of Mukhed Police Station shall record the attendance of the appellant by obtaining his signature in the Station House Diary.
- (e) The appellant shall not attempt to contact the complainant or any of his relatives or any such person who is likely to be a witness in the case, directly or indirectly, and shall refrain from tampering with evidence.
- (f) The appellant, until the trial in this case is completed, shall

not involve himself in any other offence or crime.

- (h) Violation of any of the conditions shall be a good ground for the cancellation of the bail.

7. As this Court had appointed Shri Panale, learned counsel, to represent respondent No.2, his fees are quantified at Rs.5000/- (Rupees Five Thousand) to be paid by the High Court Legal Services Sub Committee, Aurangabad.

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(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)