

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 243/2021

Shaaz Ahemad Nazir Ahemad,
Aged 39 years, Occ. Business,
R/o. Faiz Nagar, Yavatmal,
Tq. & Dist. Yavatmal.

.... **APPELLANT**
(In Jail)

// VERSUS //

1. State of Maharashtra,
through P. S. O. Yavatmal City,
Tq. & Dist. Yavatmal.
2. Chandan Sudam Hatagade,
Aged about 35 years, Occ. Labourer,
R/o. Netaji Nagar, Yavatmal,
Tq. & Dist. Yavatmal.

.... **RESPONDENTS**

Shri Anil Mardikar, Sr. Advocate assisted by Shri Yuvraj Dhande, Advocate for appellant.

Shri M. J. Khan, APP for respondent No. 1/State.

Shri V. D. Darne, Advocate for respondent No. 2.

CORAM : VINAY JOSHI, J.

DATED : 14.07.2021

JUDGMENT

Hearing was conducted through Video Conferencing.

2. Heard.

3. **Admit.** By consent of the learned counsel present for the parties, appeal is taken up for final disposal.

4. This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC and ST' Act) challenging the order of rejection of bail passed by the Additional Sessions Judge-1, Yavatmal in Crime No. 481/2021 for the offence punishable under Sections 365, 397, 109, 504, 506 of the Indian Penal Code, Section 3(2)(va) of the SC and ST Act and Sections 3, 25 of the Arms Act. Besides usual grounds, bail is claimed on the ground of inadequacy of material against the appellant/accused. It is canvassed that besides mere presence of the appellant at the time of occurrence, no other role has been ascribed to him. The State resisted bail by contending that the alleged offences are of serious nature, as well the appellant was physically present at the time of occurrence.

5. Shri Darne, learned Advocate for the respondent No. 2 (informant) also resisted bail by narrating the facts. By placing reliance on the decision of the Supreme Court in case of ***Sudha Singh Vs. the State of Uttar Pradesh and another (Criminal Appeal No.***

448/2021) decided on 23.04.2021, he would submit that due to criminal antecedents, appellant is not entitled for bail.

6. Injured Chandan has lodged report regarding occurrence dated 19.05.2021. According to informant Chandan, at relevant time, initially he was threatened by one Sagir Mistri who called his associates at the place of occurrence. Informant Chandan stated about the assault by means of plastic pipe, sticks, belt etc. Particularly, in respect of appellant, he has stated that at the relevant time, appellant also arrived at the place of occurrence. Besides mere presence of appellant, no other role has been ascribed to him. Since informant was accompanied by his brother Vikas, his statement is also material. Learned Additional Public Prosecutor has read over the statement of Vikas who has even not stated the name of appellant. Vikas referred about some unknown assailants. On my query, learned Additional Public Prosecutor conceded that no Prior Test Identification Parade has been conducted. In the light of said material, it is evident that neither the appellant used any deadly weapon nor assaulted to the victim. Having regard to the said aspect, there is no difficulty in enlarging appellant on bail.

7. In above referred case of Sudha Sing, the Supreme Court has expressed that it is necessary for the Court to consider the antecedents of accused while deciding his entitlement for bail. The State has not brought any antecedents on record. However, in bail application itself, the appellant has state that, in past three offences punishable under Sections 353 of the Indian Penal Code are registered against him. No doubt, the Court has to consider the antecedents, but the entitlement for bail depends upon overall assessment of all relevant factors. In above referred case of Sudha Singh, the facts were quite distinct as the then accused was a gangster involved in antisocial activities. The case in hand differs on facts. Since there are no allegations against the appellant about the assault, his further detention is no more required. Already the appellant has faced custodial interrogation and for the period of near about two months, he is in judicial custody. The trial will take considerable time for its disposal. In view of that, appellant has made out a case for grant of bail, hence following order:-

(I) Appeal stands allowed.

(II) Order dated 15.06.2021 passed by the Additional Sessions Judge-1, Yavatmal is hereby quashed and set aside.

(III) Appellant Shaaz Ahemad Nazir Ahemad is released on bail on his furnishing P. R. Bond of Rs. 25,000/- with one or two sureties in the like amount.

(IV) The appellant shall attend concerned Police Station on every Sunday in between 10.00 a.m. to 12.00 noon till filing of charge-sheet.

(V) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

JUDGE

Gohane.