

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 330/2021.

Mohammad Sagir Mohd. Jabir Ansari
@ Sagir Mistri, Aged about 40 years,
Occupation Business, resident of Adarsh
Nagar, Yavatmal, Taluq and
District Yavatmal.

... **APPELLANT.**

VERSUS

1.The State of Maharashtra,
through Police Station Officer,
Yavatmal City, Taluq and
District Yavatmal.

2.Chandan Sudamrao Hatagade,
Aged about 35 years,
Occupation – Labourer, resident
of Netaji Nagar, Yavatmal,
Taluq and District Yavatmal.

... **RESPONDENTS.**

Mr. A.S. Manohar, Advocate for the Appellant.
Mr. M.J. Khan, A.P.P. for Respondent No.1.
Shri V.D. Darne, Advocate for Respondent No.2.

CORAM : VINAY JOSHI, J.

DATE : SEPTEMBER 06, 2021.

ORAL JUDGMENT :

Admit. By consent the appeal is taken up for final disposal.

2. This is an appeal under Section 14-A of the Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging the order of rejection of bail dated 15.06.2021 in Crime No. 481/2021, for offence punishable under Sections 365, 397, 109, 504, 506 of the Indian Penal Code, Section 3[2][va] of the Atrocities Act and Section 3 read with Section 25 of the Arms Act. Consequently, the appellant is seeking his release on regular bail.

3. Besides usual grounds, it is primely canvassed that the appellant was not physically present at the time of actual occurrence. The role assigned to the appellant is only of giving threats by use of cell-phone. Already the appellant has faced custodial interrogation. The investigation is completed and charge sheet is filed, hence, his further detention is no more required.

4. The State has resisted the bail by filing reply – affidavit.

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It is contended that the appellant is the preparator of the crime. The entire incident occurred at the behest of the appellant. During occurrence, the appellant was monitoring the things by use of cellphone. The offence is of serious nature.

Likewise, the learned Counsel for the informant (respondent no.2) has also filed reply-affidavit in resistance. He would submit that the occurrence was pre-planned. The appellant is a sand mafia who has created a terror in the vicinity. Appellants' brother Salim has used fire arms, but, still he is absconding. Considering the seriousness and gravity of the offence, bail is prayed to be rejected.

5. At the instance of a report lodged by the injured Chandan Hatgade, the crime came to be registered. The informant is a social worker, and whistle blower. The informant has applied under Right to Information Act for CCTV footage about some sand ghats. On 19.05.2021, while the informant was proceeding along with his brother, the co-accused Sameer Raja accosted him and caused him to talk on mobile with the appellant Sagir. On cellphone, the appellant abused and had given threats to the informant. In

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succession other co-accused arrived on the spot and forcibly abducted the informant. They took him to one business concern namely 'S.M. Constructions'. Co-accused beaten the informant by means of plastic pipes, wooden stick, wire, belt etc. The informant was made to remove his clothes and it was video-graphed. The informant was compelled to sign on stamp papers. In the said occurrence, the informant lost cash amount of Rs.28,000/-, and therefore, the report.

6. It is straneously argued that the appellant was not at all present at the time of occurrence. According to the appellant, only on the basis of allegation of telephonic conversation, he has been falsely roped in the crime. It is submitted that the police have not collected call detail record [CDR] of the appellant to show his complicity. It is submitted by the learned Counsel for the appellant that the informant is in the habit of filing false cases. In support of said contention, he has produced documents to show that in past 4 criminal cases were registered against him. Moreover, it is pointed that the pre-arrest protection has been granted to co-accused Sameer Raja, whilst another co-accused Shaaz Ahmed, who was present at

the time of occurrence, was released on regular bail.

7. On perusal of the report and statement of eye witness, it reveals that the role ascribed to the appellant is of giving threats on mobile. Perusal of injury certificate shows that most of the injuries were of simple nature. Though the informant has pointed out two antecedents of the appellant, however, they were very old i.e. of the year 2012. The allegations is about giving threats on cellphone, which has to be proved during the course of trial. The appellant is principally facing the charge of criminal conspiracy. The learned A.P.P. would concede that there is no material in the form of CDR to show that the appellant used his cellphone for giving threats. Already the appellant has faced custodial interrogation. Merely because one of the co-accused is absconding, the liberty of the appellant cannot be curtailed. The investigation is already completed and charge sheet has been also filed. The trial will take considerable time for its disposal in accordance with law.

8. The learned counsel for the informant would submit that the appellant has created terror in the area. He has pointed that the co-accused Shaaz Ahmed was released on bail, and it was celebrated

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by breaking fire crackers and taking out procession. Prima facie it reveals that there is dispute between two rival groups. However, in order to eliminate the possibility of happening of some untoward incident in proximity, condition can be imposed. Having regard to the nature of accusation and material collected against the appellant, he can be released on bail by putting stringent conditions. In view of that following order is passed.

ORDER

- (i) Criminal Appeal is allowed. The order passed by the Additional Sessions Judge, Yavatmal in Crime No.481/2021 dated 15.06.2021, is hereby quashed and set aside.
- (ii) The appellant/accused - Mohammad Sagir Mohd Jabir Anasari @ Sagir Mistri be released on regular bail in connection with aforesaid Crime, on his furnishing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.
- (iii) The appellant /accused shall not enter into the jurisdiction of Yavatmal Municipal limits for a period of 1 (one) years, except for attending the Court proceeding on scheduled dates.

- (iv) The appellant/accused shall provide his residential address where he intend to reside and cell number to concerned Investigating Officer. The appellant/accused shall not change his new place of residence without prior intimation to the concerned Investigating Officer.
- (v) The accused 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.

Rgd.

JUDGE