

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

999 CRIMINAL APPEAL NO.120 OF 2022

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| 1) Udhav s/o. Manik Shinde
Age.47 years, Occ. Labour,
R/o. Hanumant Pimpari,
Tq. Kaij, Dist. Beed. | .. Appellants |
| 2) Rajendra s/o. Lala Shinde
Age.46 years, Occ. Labour,
R/o. Hanumant Pimpari,
Tq. Kaij, Dist. Beed. | |
| 3) Phulchand s/o. Mese Pawar
Age.54 years, Occ. Labour,
R/o. Hanumant Pimpari,
Tq. Kaij, Dist. Beed. | |
| 4) Vilas s/o. Manik Shinde
Age.40 years, Occ. Labour,
R/o. Hanumant Pimpari,
Tq. Kaij, Dist. Beed. | |

Versus

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| 1) The State of Maharashtra
Through Police Inspector,
Police Station, Kaij,
Tq. Kaij, Dist. Beed. | .. Respondents |
| 2) Saraswati wd/o. Shivaji Kale
Age.26 years, Occ. Labour,
R/o. Kothalwadi, Tq. Kallamb,
Dist. Osmanabad. | |
| 3) Deepak s/o. Ashok Shinde
Age. 52 years, Occ. Labour, | |

R/o. Kothalwadi, Tq. Kallamb,
Dist. Osmanabad.

- 4) Akash s/o. Bapu Kale
Age. 22 years, Occ. Labour,
R/o. Kothalwadi, Tq. Kallamb,
Dist. Osmanabad.

Mr. N.B. Khandare h/f. Mr.S.A. Hake, Advocate for the appellants.

Mr.K.S.Patil, APP for the respondent/State.

Mr.R.D. Khadap, Advocate for respondent Nos.2 to 4.

**CORAM : V.K. JADHAV &
SANDIPKUMAR C.MORE, JJ.**

DATED : 29.03.2022

PC :-

01. The appellants are seeking regular bail in connection with Crime No.471 of 2021, registered with Kaij Police Station, Tal. Kaij, Dist. Beed, for the offences punishable under sections 302, 326, 149, 143, 147, 342, 201 of the Indian Penal Code and under section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "The Atrocities Act"). Their application with similar prayer came to be rejected by the Additional Sessions Judge, Ambajogai, Dist.Beed, vide order dated 21.01.2022 passed below Exh.50, in Special Case No.121 of 2021, in terms of the

provisions of Section 14-A(2) of the Atrocities Act. The applicants-original accused have preferred this appeal against order of rejection of their bail application.

02. Learned Counsel for the appellants submits that the appellants are also persons belonging to Pardhi community and as such offence under section 3(2)(v) of the Atrocities Act cannot be attracted against them. Learned Counsel submits that as per the prosecution story, the incident had taken place on 27.09.2021 at about 23=00 hours to 28.09.2021 till 07=30 hours at village Hanumant Pimpri, Tq. Kaij, Dist. Beed. On the date of incident deceased Shivaji Kale along with his brother-in-law Deepak Shinde and his another cousin brother-in-law Akash Kale had left village at about 06=30 p.m. to enquire about work of harvesting soybean crop etc. They were passing through village Hanumant Pimpri. However, due to heavy rains and flood situation, silencer of their motorcycle got blocked. Accordingly, they walked with their motorcycle to village Hanumant Pimpri.

However, at that time original accused Nos.5 to 15 (villagers) caught hold of them on the suspicion that they are tractor thieves, who had earlier stolen their tractor from the village. Learned Counsel submits that as per statements given by eye witnesses, co-accused Nos.5 to 15 have extended beating to all of them including deceased Shivaji Kale. After extending beating, those villagers (co-accused Nos.5 to 15) had called present appellants, who are also belonging to Pardhi community from that village to identify the injured eye witnesses Akash Kale, Deepak Shinde and deceased Shivaji Kale. Learned Counsel for the appellants submits that role of the appellants is limited to the extent that they had identified said persons as the persons belonging to Pardhi community from another village and it is also further alleged in the complaint that they have also extended beating to deceased Shivaji Kale and injured eye witnesses Deepak Shinde and Akash Kale respectively. Learned Counsel submits that it appears from the statement of eye witnesses recorded

during the course of investigation that after so called identification and beating allegedly extended to the injured and the deceased by these appellants, they had left that place and other co-accused Nos.5 to 15 continuously extended beating to deceased Shivaji Kale and eye-witnesses Deepak Shinde and Akash Kale from 2=00/02=30 a.m. till morning. Learned Counsel submits that during the course of investigation, statements of two injured eye witnesses Deepak Shinde and Akash Kale came to be recorded under section 164 of the Cr.P.C., wherein both of them have stated before the Magistrate that before arrival of the appellants on the spot for the purpose of identification, deceased Shivaji Kale was dead and further these appellants have extended them beating by slaps on their cheeks, for the reason, by questioning them as to why they had come in their village though they are Pardhi persons residing in different village. Learned Counsel for the appellant submits that there are no antecedents. The appellants and the accused persons are ready to abide the conditions, if imposed by

this Court, while releasing them on bail. The appellants/accused are in jail since 29.09.2021.

03. Learned Counsel for respondent Nos.2 to 4 i.e. informant Saraswatibai, injured eye witnesses Deepak Shinde and Akash Kale submits that during the course of investigation, the identification parade was conducted and these two injured eye witnesses have identified the appellants. Learned Counsel for respondent Nos.2 to 4 submits that the offence is serious. Deceased Shivaji Kale was subjected to beating all the night and he had sustained multiple injuries. Learned Counsel submits that the appellants may not be released on bail.

04. Learned APP submits that there is strong possibility of tampering of evidence if the appellants are released on bail. Learned APP submits that there is prima facie case against the appellants. The appellants have been duly identified by respondent Nos.3 and 4 who are injured eye witnesses. The appellants may not be

released on bail.

05. We have carefully gone through the contents of the complaint and also perused the charge-sheet. It appears that deceased Shivaji Kale and two injured eye witnesses, namely, Deepak Shinde and Akash Kale had been to village Hanumant Pimpri in search of motor garage and villagers suspected about their involvement in the earlier crime of theft of the tractor. Consequently, the villagers caught them, brought them at certain place at village and started extending beating to them. Meanwhile, the villagers had also suspected that the said deceased Shivaji Kale and injured eye witnesses Deepak Shinde and Akash Kale are belonging to Pardhi community and accordingly they had called their own villagers belonging to Pardhi community to identify the injured eye witnesses and deceased Shivaji Kale. The appellants are those persons belonging to Pardhi community, who had been called by the villagers on the spot to identify the deceased Shivaji and said injured eye witnesses. It

further appears from the investigation papers that the present appellants had talked to injured eye witnesses in Pardhi language and further slapped them on their cheek by saying that how they could dare to come in their area for committing crime like theft. The injured eye witnesses Deepak Shinde and Akash Kale have consistently stated in their statement that after said identification and slapping, the appellants left the spot and thereafter deceased Shivaji Kale and eye witnesses were taken in one godown. It further appears from their statement that the villagers i.e. accused Nos.5 to 15 extended beating to the deceased Shivaji Kale and injured eye witnesses i.e. respondent Nos.3 and 4 herein till the morning. In consequence of which deceased Shivaji Kale died due to sustaining of multiple injuries. It further appears from the statements of injured eye witnesses recorded by the Magistrate under section 164 of the Cr.P.C. that deceased Shivaji Kale was dead when these appellants belonging to Pardhi community were called at the spot for identification. In view of above and considering the

role played by present appellants, we are inclined to release the appellants on bail with certain conditions. So far as apprehension expressed by learned Counsel for respondent No.2 about tampering of prosecution evidence is concerned, the injured eye witnesses are admittedly hailing from different village and as such there is less possibility of tampering of evidence. Further-more, so far as the issue of identification of the appellants before us is concerned, the identity is not in dispute to the extent of considering the present appeal for bail. Hence, following order :-

O R D E R

- (1) The Criminal Appeal is hereby allowed.
- (2) Appellant No.1 - Udhav s/o. Manik Shinde, Appellant No.2 - Rajendra s/o. Lala Shinde, Appellant No.3 - Phulchand s/o. Mese Pawar and Appellant No.4 - Vilas s/o. Manik Shinde be released on bail in connection with Crime No.471 of 2021 registered at Kaij Police Station, Tal. Kaij, Dist. Beed, for the offences

punishable under sections 302, 326, 149, 143, 147, 342, 201 of the Indian Penal Code and under section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act vide Special Case No.121 of 2021, on furnishing personal bond of Rs.20,000/- (Rupees Twenty Thousand) each with one solvent surety in like amount each, with following condition.

(i) The appellants shall not tamper the prosecution witnesses in any manner.

(3) The appeal is accordingly disposed of.

[SANDIPKUMAR C. MORE,J.]

[V.K. JADHAV,J.]