

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.450 OF 2022

Vishal s/o Balaji Narwade
Age: 21 years, Occu. Education,
R/o. Shriram Apartment Zenda Chowk,
Nanded, Tq. and Dist. Nanded .. Appellant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Police Station, Bhagya Nagar,
Tq. and Dist. Nanded
2. Raosaheb Shriram Pupplawad
Age: 45 years, Occu. Business,
R/o. Gajanan Apartment, Swaminarayan
Nagar, Bhagyanagar, Nanded. .. Respondents

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Mr. M. M. Parghane, Advocate for appellant.
Mr. A. M. Phule, APP for respondent No.1 – State.
Mr. Satej S. Jadhav, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 15th September, 2022
PRONOUNCED ON : 3rd October, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Present appeal has been under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "Atrocities Act") to challenge the order of rejection of bail application filed by the appellant under Section 439 of the Code of

Criminal Procedure passed by the learned Additional Sessions Judge-2 / Special Judge, under the Atrocities Act, Nanded.

2. The appellant came to be arrested in connection with Crime No.194 of 2021 dated 20.06.2021 registered with Bhagyanagar Police Station, Taluka and District Nanded for the offences punishable under Section 307 read with Section 34 of Indian Penal Code (for short "IPC) and under Sections 3(1)(r) and 3(1)(s) of the Atrocities Act. It was on the basis of the FIR lodged by present respondent No.2.

3. Heard learned Advocate Mr. M. M. Parghane for the appellant, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Mr. Satej S. Jadhav for respondent No.2.

4. It has been vehemently submitted on behalf of the appellant that perusal of the FIR would show that the incident appears to have taken place due to the financial transaction and the story has been exaggerated by respondent No.2. The injuries sustained by the informant are not grievous and also not on the vital part of the body. When the appellant has been arrested since 20.06.2021, he need not be kept behind bar for long period. The investigation is over and charge-sheet is also filed. If we consider the medical certificate, then it speaks about fracture and, therefore, at the most

Section 326 of IPC would be invoked and not Section 307 of IPC. The appellant is ready to abide by the terms of the bail and all these things had not considered by the learned Special Judge and, therefore, the present appeal has been filed.

5. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the appeal and submitted that the appellant and respondent No.2 were knowing each other even prior to the incident. When even earlier also the appellant had abused respondent No.2 in the name of caste, offence was registered in that respect. Appellant and his father thereafter started disputing as to why respondent No.2 had lodged report. The assault was by means of sickle by the present appellant and then he had pushed respondent No.2 in front of a tipper, which was coming from the road. Respondent No.2 somehow managed to get his body away from the tyre of the tipper, but his fingers of the left leg got crushed below the tyre. The prosecution story stands supported by Rama Nagnath Kalewad, who was along with the appellant at the relevant time. The incident has taken place at about 1.00 p.m. on 08.06.2021. The sickle has been discovered upon disclosure made by the present appellant. The medical certificate would show that his left foot had crush injury so also there was fracture. Statement of Pappu Vitthal Metkar would show

that he was driving the tipper bearing MH-10-Z-2504. He was near Navjeevan Nagar Paati at about 1.00 p.m. He saw that three persons were quarreling. Two persons were on the motorcycle and one person was throwing stones and assaulting by kicks and fists. The leg of the person on the motorcycle came under the tyre of the tipper. Therefore, there is evidence against the informant and similar statement has been given by one Chandu Laxman Metkar, who was also tipper driver and owner. Therefore, when there is ample evidence against the appellant, he need not be released on bail.

6. At the outset, it is to be noted that the intention to cause injury can be gathered from the acts and it is not even necessary that there should be injury in respect of an offence of attempt to commit murder. The intention to commit murder is the important ingredient there. Perusal of the FIR would show that there was earlier dispute between the parties and on that day, the FIR came to be lodged stating that the present appellant and his father have committed the offence, however, the charge-sheet would show that the father of the present appellant had met with an accident and it appears that after investigation, the charge-sheet is not filed against him. As regards the allegations against the appellant are concerned, it is to be noted that he had assaulted the informant by

sickle. It is stated that he had intention to commit murder of the informant and accordingly, the blow was tried to be given, however, it was avoided by the informant. Later on he was pushed by the appellant in front of a tipper going from the road and in that though he managed to rescue him, he got crush injury to the fingers of his left leg. Now, the sickle has been seized and there are statements of witnesses to show that the appellant had pushed the informant in front of a running tipper. Now, nothing is required to be seized at the instance of the present appellant though it appears that the appellant was having knowledge about the caste of the informant. In view of the financial transactions, it does not appear even *prima facie* that the act would have been done only because the appellant is member of Scheduled Caste. Further the atrocity case appears to have been lodged earlier as per the statement of Rama Nagnath Kalewad and on that day i.e. 08.06.2021, there were no abuses in the name of caste. The informant says that he was assaulted on his legs by sickle, however, the Medico Legal Certificate does not include any such injury which could have been caused by a sharp weapon. It has been rather stated that the type of weapon used is run over by truck. We need not go into the aspects as to whether the evidence attracts either Section 307 or 326 of Indian Penal Code, but the fact is certain that both are punishable with imprisonment for life. It also appears that thereafter, the informant

had shifted himself to Global Superspeciality Hospital and the documents from that hospital also do not indicate any cut injury or incised wound. It will take long time to stand the trial and therefore, by imposing strict conditions, the application ought to have been allowed by the learned Special Judge. Since the discretion has not been properly used, the appeal deserves to be allowed. For the aforesaid reasons, the following order is passed :-

ORDER

- I) The Appeal stands allowed.
- II) The order below Exhibit-2 in Special Case No.105 of 2021 passed by learned Additional Sessions Judge-2 / Special Judge, under the Atrocities Act, Nanded on 10.11.2021 is hereby set aside. The said application stands allowed.
- III) The appellant – Vishal Balaji Narwade, who has been arrested in connection with Crime No.194 of 2021 registered at Bhagya Nagar Police Station, Dist. Nanded for the offences punishable under Section 307 read with Section 34 of IPC and Sections 3(1)(r) and 3(1)(s) of the Atrocities Act, be released on P. R. Bond of Rs.50,000/- with two sureties of Rs.25,000/- each.

IV) The appellant shall not tamper with the evidence of the prosecution in any manner.

V) The appellant shall remain present before the Investigating Officer as and when called.

VI) He shall not enter the jurisdiction of Nanded city till the conclusion of the trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his mobile number to the Investigating Officer. He is allowed to come in Nanded only to attend the Court dates.

VII) He shall not indulge in any criminal activity.

VIII) Bail before the Trial Judge.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm