

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

CRIMINAL APPEAL NO. 699 OF 2022

Pandurang s/o Balasaheb Khillare
Age : 36 years, Occu. Agril,
R/o At Post Shinganapur,
Tq. and Dist. Parbhani

... APPELLANT
(Orig. Accused No.5)

VERSUS

1. The State of Maharashtra
Through Police Station Officer,
Daithana Police Station,
Tq. Dist. Parbhani.
2. Balaji s/o Motira Kambale
Age 21 years, Occu. Labour
R/o Shinganapur, Tq. & Dist. Parbhani. ... Respondent
(Res.No.2 is Ori. Informant)

Mr. V. D. Sapkal, Senior Advocate i/b Mr. P. B. Vikhe, Advocate
for the appellant
Mr. A. A. Jagatkar, APP for respondent No.1/State
Mr. Subhash Nade, Advocate for respondent No. 2.

**CORAM : R. G. AVACHAT &
R. M. JOSHI, JJ.
DATED : 19th OCTOBER, 2022**

JUDGMENT (PER- R. M. JOSHI, J.):-

1. This is an appeal filed by the appellant under
Section 14-A(2) of the Scheduled Castes and the Scheduled
Tribes (Prevention of Atrocities) Act, 1989 against judgment

and order dated 13th September, 2022 passed by the learned Additional Sessions Judge, Parbhani rejecting the application for regular bail in connection with Crime No. 189 of 2022 registered with Daithana Police Station, Parbhani.

2. Appellant came to be arrested in connection of the crime registered at the behest of informant Balaji who lodged FIR on 17th August, 2022. According to him on 13th August, 2022 at about 11.20 am he received phone call from Rahul Kamble stating that Angad Khillare and others have assaulted Govind. He, therefore, came back home and found that his uncle Karbhari had brought Govind home. Govind had received injuries to his head, legs and chest. It is the contention of the informant that Govind told him about the incident in which Angad, Akshay, Mohan and Yuvraj assaulted him with iron pipe and Pandurang Khillare (appellant) and Rambhau Kadam were instigating the assailants for the assault by making abuses on caste against deceased.

3. Learned senior counsel for the appellant submitted that as per the case of the prosecution there is only one eye

witness to the incident in question i.e. Rahul Kamble who has failed to identify present appellant during identification parade and the said fact has been recorded by learned Trial Court in the impugned order. It is submitted that there is absolutely no evidence on record to suggest that the appellant was present at the spot and hence it is a fit case for grant of bail.

4. Learned APP opposed the appeal by pointing out that report lodged by Balaji wherein he claimed Govind making statement to him about the incident in question, shows presence of present appellant and his role of instigating the co-accused for assault. It is submitted that since the investigation in progress it is not the fit case to grant the bail.

5. Learned counsel for respondent No. 2 opposed the appeal with submission that there is evidence to show that the present appellant has abused the deceased over his caste and that instigation done by him for the assault is sufficient to decline bail to the appellant.

6. Incident in question has occurred on 13th August,

2022 however, FIR was lodged on 17th August, 2022. If injured Govind had given the account of incident in question including names of the assailants and instigators, the FIR ought to have been lodged immediately. Apparently in this case there is only one eye witness to the incident viz. Rahul Kamble. Perusal of his statement does not show presence of the appellant herein at the spot. Similarly, it also does not say about any one abusing deceased over his caste. Exclusion of the presence of present appellant creates doubt about his involvement in the absence in question. Moreover, as recorded by the learned Trial Court eye witness has failed to identify appellant in the identification parade. Statement of Karbhari who claims to have learnt about the incident from deceased Govind is recorded after seven days of occurrence of incident. Thus, no importance can be given to the same at this stage.

7. Merely because investigation is not completed, the person against whom there is absolutely no evidence on record cannot be detained in jail. Perusal of the impugned order shows that document on record before Trial Court shows the

status kept in social media whereby it is predicted that soon appellant/accused is coming out of jail and that seems to have influenced the decision of the learned Trial Court.

8. *Prima facie* consideration of the material on record does not show any evidence to accept presence of the appellant at the scene of crime and his involvement therein in any manner. Absence of any such material to connect him to the crime entitles him to be released on bail. Hence the order.

ORDER

(i) The appeal is allowed.

(ii) The appellant be released on bail in connection with Crime No. 189 of 2022 registered with Daithana Police Station, Parbhani, Tq. and District Parbhani, on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The appellant shall not tamper with the prosecution evidence.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

SSP/