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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 375 OF 2022

Pramod @ Tatya Anil Sawant

Age : 29 years, Occ: Education,
R/at. Kolegaon, Tal. Malshiras,
District : Solapur

.. Appellant

Versus

1. The State of Maharashtra

Through Velapur Police Station,
Tal. Malshiras, Dist. Solapur.
C.R. No. 347/2021

2. Ashish Sitaram Dhandore,

Age : 24, Occu: Business,
R/at : Kolegaon, Tal. Malshiras,
Dist. Solapur.

.. Respondents

-
- Ms. Manisha Devkar, Advocate for the Appellant
 - Ms. M.M. Deshmukh, APP for the State
 - Mr. Pravin Dabade, Advocate for Respondent No.2
-

**CORAM : SMT. SADHANA S. JADHAV &
MILIND N. JADHAV, JJ.**

DATE : MAY 05, 2022.

P.C.:

1. This is an appeal filed by the Appellant seeking enlargement on bail in connection with C.R. No.347/2021 registered at Velapur Police Station, District Solapur for offences punishable under Sections 307, 504, 506 of the Indian Penal Code, 1860 (for short "**IPC**") and Sections 3(1)(R)(s), 3(2)Va of the Scheduled Castes

and Scheduled Tribes (Prevention and Atrocities) Act, 1989 (for short "**Atrocities Act**") read with Section 135 of the Maharashtra Police Act, 1951.

2. According to the prosecution on 10.06.2021 Crime No. No.193 of 2021 was registered with the Velapur Police Station against the Appellant. In that proceeding, Respondent No.2 along with the informant had filed an affidavit to oppose enlargement on bail of the Appellant. Respondent No.2 is the informant in the present case.

3. In view of the above incident, it is alleged that the Appellant was angry and upset with the Respondent No.2. It is alleged that on 18.10.2021 at about 08.30 p.m. the Respondent No.2 was talking with his friend in front of the hotel of Dada Vadapavwala at Village Kolegaon. At that time, the Appellant came over on his motorcycle and offered to drop the Respondent No.2's friend at his house on his request. It is alleged that as the Appellant was about to leave along with the Respondent No.2's friend, the Appellant abused the Respondent No.2 in filthy language, leading to an altercation, that he thereafter climbed down from his motorcycle and attempted to inflict a blow with the knife on Respondent No.2. At that time, the brother of the Appellant and the others present at the spot of incident intervened and separated the Appellant and Respondent No.2.

4. Respondent No.2 lodged a report and FIR came to be registered with the Velapur police station bearing CR No.349 of 2021 for the offences punishable under Section 307, 504, 506 IPC and Sections 3(1)(r)(s), 3(2) Va, 3(2) V of the Atrocities Act read with Section 135 of the Maharashtra Police Act. The Appellant was arrested on 05.12.2021 and since then has been in custody. On 14.10.2021 charge-sheet has been filed in the Court of the Special Judge and Additional Sessions Judge, Malshiras.

5. The Appellant has denied committing the offence and stated that due to previous enmity a false complaint has been lodged. Ms. Manisha Devkar, learned counsel appearing for the Appellant has submitted that the case of the prosecution does not attract the provisions of commission of a crime under Section 307 IPC; that the incident took place due to altercation and at the spur of the moment and the application of the provisions of the SC & ST Act is extremely high handed, without any basis and most importantly false as none of the statements recorded by the prosecution refer to the same. She submitted that the Appellant and his family members are permanent residents of village Velapur, Taluka Malshiras, that the investigation of the present crime is complete, the charge-sheet has been filed and the Appellant has an old widowed mother to care for; that the Appellant

be put to terms as deemed fit by this Hon'ble Court to secure his presence. Hence, the Appellant has prayed for grant of regular bail.

6. *PER CONTRA*, Mr. Pravin Dabade, learned counsel appearing for the Respondent No.2, victim in the incident has vehemently submitted that in view of the criminal antecedents of the Appellant, he does not deserve to be enlarged on bail. He submitted that in the past an FIR has been registered against the Appellant with Velapur police station for breach of bail condition granted by the Court and hence keeping this in mind the Appellant should not be released on bail; that even after the present incident on 18.10.2021, the Appellant absconded and was arrested only on 05.12.2021 i.e. one and half months later, which reflects his conduct and antecedents. Learned APP Ms. M.M. Deshmukh has adopted the submissions made by the learned counsel for the Respondent No.2 and opposed the release on bail of the Appellant.

7. We have perused the report dated 18.10.2021 and copy of the FIR. On reading of the report it appears that the incident has taken place on the spur of the moment without any pre-meditation on the part of the Appellant. The charge of the prosecution that the present incident has taken place due to the earlier incident of June 2021 which was the prelude to the present incident is *prima facie* not

sustainable. Had the Appellant wanted to take revenge on the Respondent No.2, he would not have waited for four months thereafter. Further it is apparent that the Appellant came to the incident spot on his motorcycle and on being requested by the Respondent No.2's friend, offered to drop him home and was about to leave when the altercation between the Appellant and the Respondent No.2 took place. It clearly appears that an oral altercation had taken place replete with abuses leading to the alleged assault. We further state that any pending criminal case against the accused cannot be a mitigating factor in itself for refusal of the prayer for bail and a holistic view has to be taken of all facts and circumstances and more specifically of the facts of the case at hand.

8. At this stage we have perused the medical record of the injury sustained by the Respondent No.2 which is placed on record by the Appellant. The medico legal certificate bearing No.MLCNo.411/2021 issued by the Medical Officer, Grade A, PHC Velapur describes the injury sustained by the Responent No.2 as a linear abrasion over the epigastrium measuring 1 cm x 0.1 cm caused by a hard and blunt object and being in the nature of a "**simple injury**". Perusal of this medical evidence reveals that the charge and allegation of the prosecution that the Appellant had attempted to stab the Respondent No.2 with a knife in his stomach appears to be incongruous

and ambiguous. That apart the charge under the Atrocities Act levelled by the prosecution is also *prima facie* not proven or shown to us from any of the statements which have been recorded by the prosecution. The description of the weapon available on record i.e. the knife is that of a kitchen knife measuring 18.5 cm and having a wooden handle of 11 cm. However as seen, the nature of the injury certified by the medical evidence placed on record does not *prima facie* justify the charge of the prosecution.

9. In view of the aforesaid, we are of the considered opinion that a case for enlargement on bail has been made out by the Appellant and hence we pass the following order:

- (i) The Appellant i.e. Pramod @ Taty Anil Sawant accused arrested in Crime No.347 of 2021 registered with Velapur police Station be enlarged on bail on furnishing a PR Bond in the sum of Rs.25,000/- and one or more solvent sureties in the like amount;
- (ii) The Appellant shall not enter the jurisdiction of village Kolegaon and more specifically the jurisdiction of Velapur police station in Taluka Malshiras, District Solapur for a period of 6 months from the date of this order;

- (iii) The Appellant shall report to the Velapur police station on the first and last day of the month till the framing of the charge or the aforesaid period of 6 months whichever is earlier; to attend the police station the Appellant is permitted to enter Village Kolegaon;
- (iv) The Appellant shall not try to or attempt to contact the Respondent No.2 and /or any other witnesses whose statements have been recorded by the prosecution and influence them in any manner whatsoever during the aforesaid period.

10. Criminal Appeal No. 375 of 2022 stands allowed and disposed of in terms of the above directions.

[MILIND N. JADHAV, J.] [SMT. SADHANA S. JADHAV, J.]

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