

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 451 OF 2021

Digambar S/o Anandrao Okate,
Aged about 82 years, Occ.:- Nil
R/o Nimkhed, Tah. Patur,
District Akola

.... **APPELLANTS.**

// VERSUS //

1. The State of Maharashtra,
through Police Station Officer,
Police Station Channi, Tah. Patur,
Dist. Akola.

2. Ganesh S/o Siddharth Hatole,
Aged about 24 years,
Occupation : Agriculturist,
R/o Nimkhed, Tah. Patur, Dist. Akola

.... **RESPONDENTS.**

Shri A.M.Tirukh, Advocate for Appellant.

Shri S.D.Sirpurkar, A.P.P. for Respondent No.1/State.

Shri A.B.Moon, Advocate for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : 24th MARCH, 2022.

ORAL JUDGMENT :

Heard.

2. **ADMIT.**

3. The appellant who is 82 years of age has approached to this Court challenging the order below Exh.1 dated 7th October, 2021 passed by the Additional Sessions Judge, Akola in Misc. Criminal Application No. 893 of 2021 rejecting the application of appellant for grant of pre-arrest bail in Crime No. 358 of 2021 registered at Chhanni Police Station, District Akola for the offence punishable under Sections 323, 504 read with Section 34 of Indian Penal Code and Section 3(2)(v-a) and 3(1)(r)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. Shri Tirukh, learned counsel for the appellant submits that the appellant has been falsely implicated in the alleged offence. It is submitted that no incident has ever occurred as alleged in the First Information Report. It is submitted that appellant is 82 years of old and he was granted ad-interim anticipatory bail by this Court vide order dated 27th October, 2021. It is pointed out that the appellant has attended the police station on every Sunday in between 12 to 2 pm as directed by this Court while granting ad-interim anticipatory bail and, therefore, he submits that the custody of the applicant is not necessary in this matter.

5. The learned Additional Public Prosecutor strongly opposed the present application and submits that sufficient material is there to show involvement of the applicant and the statement of the witnesses, corroborate the allegations relating to Atrocities Act. He therefore, submits that as there is a bar under Section 18 of the Atrocities Act this Court cannot consider this application.

6. Shri Moon, learned counsel for the respondent no.2 reiterated the submissions of the learned Additional Public Prosecutor and prays for rejection of this appeal.

7. I have perused the chargesheet. There are independent witnesses who corroborate the prosecution story, attracting the provisions of Atrocities Act. As *prima facie* incriminating material is available to show that in this case provisions of Atrocities Act attract, the present appeal is not maintainable for grant of pre-arrest bail, in view of the bar under Section 18 of the Atrocities Act.

8. Thus, I am of the opinion that in view of the bar under Section 18 of the Atrocities Act, the present appeal needs to be rejected.

9. At this stage, Shri Tirukh, learned counsel for the

appellant submits that this Court may extend the interim protection for two weeks within which period he will surrender to apply for regular bail. He further prays that this Court may direct the concerned Court to decide the application of the appellant looking to his age on the same date on its own merit. For this purpose, he has placed reliance of the judgment of Nathu Singh Vs. State of Uttar Pradesh and others¹ and order of the Hon'ble Supreme Court of India in the case of Sandip S/o Ramesh Gawande Vs. The State of Maharashtra and another dated 19th November, 2020 passed in Special Leave to Appeal (Cri) Nos. 5445 of 2020.

10. The Hon'ble Supreme Court of India in the case of *Nathu Singh Vs. State of Uttar Pradesh and others* (supra) has observed that in exceptional case, the High Court can grant interim protection even after rejection of pre-arrest bail application.

11. The Hon'ble Supreme Court of India in the case of *Sandip S/o Ramesh Gawande Vs. the State of Maharashtra and another* (supra) has observed thus:

“However, dismissal of this special leave petition will not come in the way of the petitioner to pursue regular bail

application in connection with First Information Report No. 220 of 2020 dated 23.07.2020 registered at P.S.Khamgaon, District Buldhana, Maharashtra, which he may file within four weeks from today after surrendering before the concerned Court. Till then, no coercive steps be taken against the petitioner but the petitioner shall make himself available before the Investigating Officer as and when required in connection with the investigation of the subject case. If 48 hours advance notice is given to the local public prosecutor before moving the bail application, the concerned Court may decide the bail application preferably on the same day on its own merits and in accordance with law uninfluenced by any observation in the impugned judgment and order.”

12. In this case, there is no dispute that the appellant is 82 years old and he is in advanced age of his life. The appellant wants to surrender and apply for regular bail. Thus, in view of the judgment of *Nathu Singh Vs. State of Uttar Pradesh and others (supra)* in such exceptional case, the High Court can grant interim protection for a reasonable period.

13. The request made by the learned counsel for the appellant that directions may be issued to the concerned Court to decide the bail application preferably on the same date on its own merit can be considered in the peculiar facts of this case, in view of

the order passed by the Hon'ble Supreme Court of India in the case of *Sandip S/o Ramesh Gawande Vs. the State of Maharashtra and another (supra)*. Accordingly, I pass the following order.

ORDER

- i. Appeal is dismissed.
- ii. The appellant may file regular bail application within two weeks from today after surrendering before the concern Court. Till then no coercive steps be taken against the appellant by the respondent no.1. However, he shall attend the concerned police station whenever his presence is required.
- iii. If the appellant gives 48 hours advance notice to the local Public Prosecutor before moving regular bail application, the concerned Court is requested that such application may decide preferably on the same day on its own merits and in accordance with law, without influenced by any observation made in this judgment.
- iv. The Criminal Appeal stands **disposed of** accordingly.

S.K.Nair

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Date: 2022.03.25
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JUDGE