

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

CRIMINAL APPEAL NO.684 OF 2022

1. Rameshwar alias Amol
s/o Udhav Nagrik,
Aged about 25 years,
Occupation :-Agriculturist,
R/o Moli, Tahsil
: Mehkar, District : Buldana
(Presently at District Prison,
Buldhana)

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Janefal
District:- Buldhana
2. Raju S/o Ashok Wankhede,
Aged about 28 years,
Occupation : Agriculturist,
R/o Moli, Tahsil : Mehkar,
District: Buldhana

....RESPONDENTS

Shri R.M. Daga, Advocate for the appellant.
Shri S.M. Ghodeshwar, APP for the respondent No.1/State.
Ms Soniya Gajbhiye, Advocate for the respondent No.2.

WITH
CRIMINAL APPEAL NO.681 OF 2022

1. Vitthal s/o Samadhan Khadsan,
Aged about 39 years, Occu.
Agriculture/Peasant, R/o Moli,
Taluka Mehkar, District : Buldana

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through its Police Station Officer,
/ In-charge, Police Station, Janefal
District:- Buldhana
2. Raju S/o Ashok Wankhede,
Aged about 28 years,
Occupation :
R/o Village Moli, Taluka Mehkar,
District: Buldhana

....RESPONDENTS

Shri Raheel Mirza, Advocate for the appellant.
Shri S.M. Ghodeshwar, APP for the respondent No.1/State.
Ms Soniya Gajbhiye, Advocate for the respondent No.2.

WITH
CRIMINAL APPEAL NO.754 OF 2022

1. Shri Shivprasad Ganesh Nagrik
Aged about 33 years,
Occupation :-Agriculturist,
R/o Mola Moli, Tahsil
: Mehkar, District : Buldana

.... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Janefal, Tah. Mehkar,
District:- Buldhana
2. Raju S/o Ashok Wankhede,
Aged about 28 years,
Occupation : Agriculturist,
R/o Moli, Janefal, Tahsil : Mehkar,
District: Buldhana

....RESPONDENTS

Shri Raju Kadu, Advocate for the appellant.
Shri S.M. Ghodeshwar, APP for the respondent No.1/State.
Ms Soniya Gajbhiye, Advocate for the respondent No.2.

CORAM :- G. A. SANAP, J.
:- 17/11/2022

ORAL JUDGMENT:

1. Heard.
2. **Admit.**

3. With the consent of learned Advocate for the parties the matters are taken for final hearing.

4. All the above three appeals filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Atrocities Act”) arise out of the order dated 26.09.2022 passed in Criminal Bail Application No.222/2022, whereby the learned Special Judge rejected the prayer for bail made by the appellants. The First Information Report bearing Crime No.250/2022 was registered against the appellants on the report of the respondent No.2 at respondent No.1 Janefal Police Station, Tahsil Mehkar, District Buldhana for the offences punishable under Sections 143, 147, 148, 324, 504 and 506 of the Indian Penal Code r/w Section 3(1)(r), 3(1)(S), 3(1)(u) and 3(2)(va) of the Atrocities Act, 1989.

5. The appellants were arrested on 08.09.2022. At present they have been remanded to judicial custody. They applied for regular bail before the learned Special Judge. According to them, the investigation is almost over. Their detention is not necessary either for investigation or custodial interrogation. They have been falsely implicated in this case.

Their further detention in this crime is not warranted. Their detention would tantamount to pre-trial conviction. It is stated that considering the nature of allegations and stage of investigation they are entitled for bail. They are ready to abide by the conditions that may be imposed by this Court.

6. The State through the Investigating Officer has filed the reply and opposed the bail application before the trial Court. The same opposition has been reiterated before this Court. It is stated that investigation is in progress. The appellants belong to Maratha Community. The appellants and remaining accused have majority in the village. The appellants hurled abuses', in the name of caste at the informant and other members of the community. If the appellants are released on bail then possibility of breach of law and order cannot be ruled out. The informant and the appellants are from same village and therefore, possibility of tampering with the prosecution evidence and threat to the informant and prosecution witnesses cannot be ruled out. It is, therefore, submitted that no case has been made out to enlarge them on bail.

7. Respondent No.2 through the appointed advocate

has filed the reply and opposed the application. It is contended that if the appellants are enlarged on bail then they would definitely put the threat of killing the informant and others into reality. The informant and his family members are living under spell of terror. The appeal is not maintainable. No case has been made out to enlarge them on bail.

8. I have heard learned advocate appearing for the respective appellants, learned APP for the State and learned Advocate appointed for the respondent No.2. Perused the record and proceedings.

9. In the submission of learned advocate appearing for the appellants the similarly circumstanced accused have been granted bail by this Court in Criminal Appeal No.691/2022. The appellants are, therefore, entitled to get the bail on the ground of parity. Learned Advocate further submitted that considering the nature of the offences alleged to have been committed by the appellants, their further detention would not be necessary and warranted. They are ready to cooperate in all respect in investigation.

10. Learned APP for the State reiterated the facts stated

in the reply in his submission.

11. Learned Advocate appointed for the respondent No.2 made multiple submissions. First submission was that these appeals are not maintainable inasmuch as per Section 14-A the appeal against interlocutory order is not provided. It is submitted that the order in question is an interlocutory order and therefore, Section 14-A (2) would not be applicable. Learned Advocate further pointed out that the order was not passed by the Special Judge, duly notified as required by Section 14 of the Atrocities Act. Learned Advocate further submitted that consistent with the object behind the enactment of special legislation in the form of the Atrocities Act, the Court is required to take a strict view and by taking strict view the bail applications deserve to be rejected.

12. In order to satisfy myself about the jurisdiction of the trial Court to entertain and decide the application, I have gone through the notification dated 15.10.2016 issued by Law and Judiciary Department, Government of Maharashtra. Perusal of this notification would show that all the Existing Courts of Session at all Districts Sub Divisions in the State have been

notified as Special Courts to try the offences', under the Atrocities Act, as amended by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. It is seen on perusal of the impugned order that the learned Judge seems to have forgotten to mention his designation as a Special Judge in the impugned order. In my view that by itself cannot be a ground to accept the submission that learned Judge is not invested with the power as a Special Judge as per notification. Therefore, this submission of the learned appointed advocate has no force.

13. The second submission, in my view is also not acceptable. It is pointed out that as per Section 14 A (1) of the Atrocities Act the appeal does not lie against an interlocutory order passed by the Special Court. It is to be noted that under Section 14-A (2) specific provision has been made and remedy has been provided against the order of the Special Judge or exclusive Special Judge granting or rejecting bail. Sub-section 2 begins with *non- obstante* clause. Section 14-A (1) in view of sub section 2 would be a general provision. The special provision in the form of sub section 2 would be applicable in this case. Sub section 2 has provided appeal against the order of

Special Court or Exclusive Special Court, granting or refusing bail, to the High Court. In my view, therefore, this ground is also not available to the respondent no.2. The objection that the order in question is an interlocutory order also can be answered by taking note of distinguishing features of sub-section 1 and sub-section 2. As long as it is fully covered by subsection 2, subsection 1 can not be invoked. It is therefore, apparent that this objection is not at all available to the respondent No.2.

14. This would take me to the merits of the appeals. It is to be noted that the appellants are in jail for last more than three months. The investigation, as can be seen from the case diary, is at the fag end. It is also not the case of the investigating officer that for the purpose of investigation or custodial interrogation, the detention of the appellants is warranted. The appellants have been remanded to judicial custody. The nature of the crime has been elaborately set out in the First Information Report. Considering the nature of the crime, in my view, detention of the appellants in jail for indefinite period would not be warranted. The apprehension has been placed on record by the prosecution. In my view, on the basis of this apprehension

bail cannot be denied to the appellants. In order to take care of such objection, the remedy would be to impose appropriate conditions, if the appellants are found entitle for bail. It is apparent on the face of record that the offence alleged to have been committed under Indian Penal Code is under Section 324. The offences alleged to have been committed under the Atrocities Act are under Sections 3(1)(r), 3(1)(S), 3(1)(u) and 3(2)(va). Considering the punishment provided for the offences under the Atrocities Act, the detention of the appellants in jail would not be warranted pending the trial for indefinite period. While deciding such matter the Court has to bear in mind seriousness of the crime, stage of the investigation and the dominant position, if any, of the accused persons and the members of the particular community. In this case, the crime allegedly committed is of abusing the informant and his family members in the name of their caste. There is also an allegation of causing hurt by means of dangerous weapons. In my opinion the gravity of the crime in this case is not such to deny bail to the appellants.

15. In view of the facts and circumstances, I am of the considered view that incarceration of the appellants in jail in this

crime, pending the trial, is not at all warranted. The apprehension placed on record by the learned APP can be taken care of by imposing appropriate conditions.

16. Hence the following order:-

- (i) The appeals are allowed.
- (ii) The impugned judgment and order dated 26/09/2022, passed in Criminal Bail Application No.222/2022 by the learned Additional Sessions Judge, Mehkar is quashed and set aside to the extent of appellants - Rameshwar alias Amol s/o Udhav Nagrik ; Vitthal s/o Samadhan Khadsan ; and Shri Shivprasad Ganesh Nagrik.
- (iii) Appellants - Rameshwar alias Amol s/o Udhav Nagrik and Vitthal s/o Samadhan Khadsan and Shri Shivprasad Ganesh Nagrik be released on bail on their furnishing PR bond in the sum of Rs.25,000/- each and one surety in the like amount.
- (iv) The appellants shall not in any manner threaten the informant and the prosecution witnesses.
- (v) The appellants shall not tamper with the prosecution evidence.

(vi) The appellants shall attend respondent No.1 - Police Station Janefal, Tahsil Mehkar, District Buldhana on every Saturday between 7.00 and 9.00 pm till filing of the charge-sheet.

(vii) The appeals are disposed of accordingly.

17. Before parting with the judgment, it is appropriate to place on record the special words of appreciation for Ms Soniya Gajbhiye, learned appointed Advocate for respondent No.2. She has filed appropriate reply and made thorough research on the subject. The efforts are commendable. In view of the efforts put in by learned Advocate Ms Soniya Gajbhiye, in each appeal her fee is quantified at Rs.5,000/- in each appeal.

JUDGE

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