

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.71 OF 2023

1. Shaikh Muddasir s/o Shaikh Mahemood
Age: 23 years, Occu.: Labour
 2. Shaikh Muujamil s/o Shaikh Mahemood
Age: 21 years, Occu.: Labour,
Both R/o. Saibaba Nagar, Parbhani,
Tq. and Dist. Parbhani.
- .. Appellants**

Versus

1. The State of Maharashtra
Through New Mondha Police Station,
Parbhani.
 2. Vicky s/o Mukundrao Tupsamundre,
Age: 25 years, Occu.: Pan Shop,
R/o. Saibaba Nagar, Wangi Road,
Parbhani, Tq. and Dist. Parbhani
- .. Respondents**

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Ms. Fatema Kazi h/f Mr. S. S. Kazi, Advocate for appellants.
Mrs. Preeti Diggikar, APP for respondent No.1 - State.
Mr. A. A. Fulfagar, Advocate for respondent No.2 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : March 03, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed under Section 14-A(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 (hereinafter referred to as the "Atrocities Act") to challenge the rejection of their Bail Application No.1145 of 2022 under Section 439 of the Code of Criminal Procedure by learned Special Judge, under the Atrocities Act/Additional Sessions Judge-2, Parbhani on 07.01.2023. The present appellants have been arrayed as accused in Crime No.492 of 2022 registered with New Mondha Police Station, Dist. Parbhani, which came to be lodged at the behest of present respondent No.2, for the offences punishable under Sections 326, 324, 323 read with Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(v) of the Atrocities Act.

2. Heard learned Advocate Ms. Fatema Kazi holding for learned Advocate Mr. S. S. Kazi for the appellant, learned APP Mrs. Preeti Diggikar for respondent No.1 - State and learned Advocate Mr. A. A. Fulfagar for respondent No.2 (Appointed).

3. Now, the investigation is over and charge-sheet is also filed before the learned Special Judge on 24.02.2023. Present appellants are the accused Nos.1 and 2 named in the charge-sheet and they came to be arrested on 26.12.2022. Present respondent No.2 is a Pan Shop owner in Saibaba Nagar. He resides in Saibaba Nagar, so also the present appellants are resident of the Saibaba Nagar. Respondent No.2 was taking treatment in the surgical ward of Civil

Hospital, Parbhani on 20.12.2022 when his statement was recorded by police and it has been treated as FIR. He had disclosed that he was working in his Pan Shop around 4.30 p.m. on 18.12.2022. The present appellants along with one Syed Gaus and one more person went to his shop and asked for material (eatable items such as fennel, betel nut, mint etc.). Accordingly, he supplied the same and asked them the price to be paid. At that time, they uttered abuse in the name of caste to the informant by saying "बुद्धाड्या लय माजलास का तुला माहीत का आम्ही कोण आहोत". Still, the informant asked them to pay the amount, but at that time appellant No.1 and accused Syed Gaus had pulled the informant out of his Shop (*Pan Tapri*) and thereafter appellant No.2 and the other person brought iron rod from a puncture shop nearby and all of those four persons assaulted him by iron rod on his back, chest, neck, nose, teeth and left wrist. He received grievous injury to his left wrist and his tooth came to be uprooted.

4. It has been vehemently submitted on behalf of the appellants that now the investigation is over and charge-sheet is also filed. It shows false involvement of the appellants because in the FIR it is absolutely not mentioned as to how the appellants were knowing the caste of the informant and it is stated that all the accused persons

abused the informant in chorus. No such incident as alleged has taken place. It will take long time to stand the trial and, therefore, the learned Trial Judge ought to have granted bail to the appellants.

5. Per contra, the learned APP as well as learned Advocate Mr. A. A. Fulfagar, who is appointed to represent the cause of respondent No.2 in view of failure on the part of the informant to appear in spite of proper service, supported the reasons given by the learned Special Judge while rejecting the bail application. Learned Advocate appointed for respondent No.2 submitted that after his appointment, he had contacted respondent No.2 and had taken instructions and now the informant is receiving threats from unknown persons. It is not in dispute that the informant is a member of Scheduled Caste. The Medico Legal Certificate issued by the Civil Hospital though showing that he had received only one injury, which is simple in nature, yet the fact is that his FIR is taken when he was still admitted in the hospital. Final medical certificate appears to be not yet collected. The recovery of the rod is by appellant No.2 under Section 27 of the Indian Evidence Act. The statement of witnesses recorded under Section 161 of the Code of Criminal Procedure supported the prosecution story and, therefore, when *prima facie* evidence is available against the appellants, they do not deserve discretionary relief.

6. It is to be noted that the appellants, who came to be arrested on 26.12.2022 appears to have cooperated in the investigation, as a result of which the investigation is complete and charge-sheet is also filed on 24.02.2023. Statement of witnesses under Section 161 as well as in respect of certain witnesses under Section 164 of the Code of Criminal Procedure have been recorded. They all support *prima facie* to the FIR, however, the fact remains is that the Medico Legal Certificate shows that at the time of admission, the concerned medical officer had noted that there was only one injury and it was simple in nature. Definitely final certificate ought to have been collected before the filing of charge-sheet, but that may also be produced at later stage of the trial. Another fact is that though the informant is saying that he is the member of Scheduled Caste, the FIR is silent as to how the informant was knowing the accused or accused were knowing the informant prior to the date of incident. They are resident of the same area, but it is not the case of respondent No.2 that the appellants are his regular customers. In view of the fact that the application before the learned Special Judge was under Section 439 of the Code of Criminal Procedure, there was no question of bar under Section 18 or 18-A of the Atrocities Act. Thus, now the weapon also discovered under Section 27 of the Indian Evidence Act by present appellant No.2 and one iron rod is stated to have been

produced by co-accused Syed Gaus. With this evidence, the appellants need not be kept in jail, as it will take long time to stand the trial. At this stage any criminal antecedents have not been brought on record.

7. As regards the impugned order passed by the learned Special Judge under the Atrocities Act is concerned, it will have to be observed that the said order was passed prior to the filing of charge-sheet and in fact the charge-sheet came to be filed after the present appeal was filed and, therefore, this Court has the advantage of going through the entire charge-sheet also. With imposing strict conditions, the appeal deserves to be allowed. Hence, the following order :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the Atrocities Act/Additional Sessions Judge-2, Parbhani in Criminal Bail Application No.1145 of 2022 dated 07.01.2023 stands set aside. The said application stands allowed.
- iii) Appellant No.1 - Shaikh Muddasir s/o Shaikh Mahemood and Appellant No.2 - Shaikh Muujamil s/o Shaikh Mahemood, who have been arrested in connection with Crime No.492 of 2022 registered with New Mondha Police Station, Dist.

Parbhani for the offences punishable under Sections 326, 324, 323 read with Section 34 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(v) of the Atrocities Act, be released on P.R. Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.

iv) The appellants shall not visit or reside in Saibaba Nagar, Taluka and District Parbhani till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the appellants should give complete address of their proposed residence with their mobile numbers to the Trial Court as well as to the Investigating Officer.

v) They shall not tamper with the evidence of the prosecution in any manner.

vi) They shall not indulge in any criminal activity.

vii) Bail before the Trial Court.

viii) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE