

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

CRIMINAL APPEAL NO.211 OF 2023

Ramesh S/o Pralhad Kadam,
Age-62 years, Occu:Agri.,
R/o-Chanai, Tq-Ambajogai,
District-Beed.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Police Station, Ambajogai City,
Tq-Ambajogai, District-Beed,
- 2) Ramdhan Gorakhnath Ghanghav,
Age-25 years, Occu:Driver,
R/o-Chanai, Tq-Ambajogai,
District-Beed.

...RESPONDENTS

...
Mr. S.S. Thombre Advocate for Appellant.
Mr. R.D. Sanap, A.P.P. for Respondent No.1 – State.
Mr. U.L. Telgaonkar Advocate for Respondent No.2.
...

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

DATE OF RESERVING JUDGMENT : 12th APRIL 2023

DATE OF PRONOUNCING JUDGMENT : 4th MAY 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Admit.

2. Present Appeal has been filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act") to challenge the order dated 21st February, 2023 passed by the learned Special Judge under the Atrocities Act and Additional Sessions Judge, Ambajogai, below Exhibit-5 in Special Atrocity Case No.90 of 2022, thereby rejecting the bail application filed under Section 439 of the Code of Criminal Procedure by the present appellant. The present appellant has been arrayed as accused No.1 in the said case. It is arising out of Crime No.437 of 2022 registered with Ambajogai City Police Station, Taluka Ambajogai, District-Beed on 6th October 2022 for the offence punishable under Sections 143, 147, 148, 149, 120-B, 302, 324, 326, 504 of the Indian Penal Code and Sections 3(2)(v) and 3(1)(r)(s) of the Atrocities Act.

3. Heard learned Advocate Mr. Thombre appearing for the appellant, learned APP appearing for the State and learned Advocate Mr. Telgaonkar appearing for respondent No.2.

4. It has been vehemently submitted on behalf of the appellant that since the application was under Section 439 of the Code of Criminal Procedure, there was no bar under Section 18 or 18-A of the Atrocities Act, as the said bar is for the application under Section 438 of the Code of Criminal Procedure. The learned Special Judge therefore ought to have considered the said application from that angle. The appellant came to be arrested on 6th October 2022 and after undergoing the police custody, he is in magisterial custody since 10th October 2022. The investigation is complete and charge-sheet is filed before the learned Special Judge on 22nd December 2022, therefore, the physical custody of the appellant is not required for the purpose of investigation. The contents of the First Information Report (for short "the FIR") as well as the entire documents in the charge-sheet would show that an incident had taken place around 10.30 a.m. on 5th October 2022 in the grocery shop as well as in front of grocery shop of the appellant. It is alleged that the present appellant had abused deceased Gorakhnath, who is the father of

respondent No.2 / original informant, in the name of caste. It is then stated that grand-father of the informant had pacified the dispute, but then the father of the informant had continued his daily pursuit. Father of the informant went to his field and returned around 4.45 p.m. He then told informant that he received phone call from one Manoj Itkar when he was in the field, whereby Manoj had called him to the shop of present appellant. Said Manoj had abused Gorakhnath on phone and asked him to come to the shop of the appellant by giving threats. Thereafter informant has told his father that he should not go to the shop of the appellant. Informant then says that hooligans, who were brought by the present appellant, were raising chaos and abusing Gorakhnath by standing at the end of the galli in which the house of the informant is situated. It is then stated that Gorakhnath and grand-father Madhukar started to go towards those persons who were abusing and then the informant followed them. It is then stated that Manoj had stabbed khanjir (like sharp knife) on the buttock of Gorakhnath. One Navnath Itkar caused grievous injuries to Gorakhnath by assaulting him on his head by brick. Suraj Ramesh Kadam i.e. son of the present appellant had assaulted grand-father Madhukar More on his head by scythe. It is then stated that all

the other accused persons had assaulted Gorakhnath on his chest, stomach, back etc. with an intention to kill him. Informant is not taking name of the present appellant in the list of those accused who had actually assaulted the father. It is specifically stated that the appellant was instigating all the accused persons by saying that Gorakhnath should not be left and he should be killed. Thus, except the alleged instigation, no role is attributed to the present appellant of actually causing injuries. In the entire charge-sheet also the witnesses have not deposed that any weapon was ever used by the present appellant. There is no discovery at the hands of the present appellant. Under such circumstance, appellant deserves to be released on bail. It has been further submitted that Gorakhnath has expired on 5th October 2022. The postmortem report would show that cause of death is, 'hemorrhagic shock due to stab injury and blunt trauma to abdomen'. Appellant is not an author of those injuries and therefore deserves to be released on bail. All these facts were not considered by the learned Special Judge and therefore, the impugned order deserves to be set aside.

5. Per contra, the learned APP as well as learned Advocate representing respondent No.2 strongly opposed the Appeal.

Affidavit-in-reply has been filed by respondent No.2 - original informant stating that he is the member of scheduled caste and his father was also of the same caste. Injured Madhukar More is his grand-father, who is also of the same caste. Appellant is not belonging to the said caste or any other scheduled caste or scheduled tribe. Appellant is the mastermind and main culprit. Appellant has taken active participation and instigated the other accused to kill Gorakhnath. He has money as well as muscle power and thereby created terror in the vicinity. If appellant is released on bail, there is threat to the life of the witnesses. Non-cognizable reports have been filed with the police stations when such threats were given. Learned APP as well as learned Advocate for respondent No.2 vehemently submitted that perusal of the charge-sheet would show that there is ample evidence against the present appellant. Appellant had abused the deceased in the name of the caste in the morning and it appears that there was conspiracy between him and Manoj Itkar as well as other accused persons who had then decided to eliminate Gorakhnath. The accused persons have then carried out the act which was agreed. It is one of the heinous crime that is committed and therefore, there is no question of showing sympathy to the appellant.

6. Learned Advocate for respondent No.2 has relied on the decision in **Anil Kumar Tulsyani vs. State of U.P. and another, (2006) 9 SCC 425**, wherein the relevant considerations for grant of bail stated in **State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21** have been reiterated. It has been observed that, it is well settled principle of law that one of the considerations in granting bail in non-bailable offences is the gravity and the nature of the offence. Further, reliance has been placed on the decision in **Indresh Kumar vs. State of Uttar Pradesh and another, 2022 DGLS (SC) 908**, wherein the ratio laid down in **Dataram Singh vs. State of Uttar Pradesh and another, 2018(3) SCC 22** has been reiterated, wherein also it was held that:

“ There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by even High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case ”.

. Further, in **Indresh Kumar vs. State of Uttar Pradesh**

and another, (supra) reliance was placed on the observations in ***Emperor vs. Hutchinson, reported in AIR 1931 All. 356,*** wherein the Court held that grant of bail is the rule and refusal is the exception, but we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the Judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory. Learned Advocate for respondent No.2 has submitted that the discretion has been wisely utilized in this case by the learned trial Judge taking into consideration the fact that the present appellant was the mastermind of the crime; the said order does not require any interference at the hands of this Court.

7. At the outset, we would like to say that ratios laid down in the above authorities as well as other citations which govern the field are definitely required to be considered in mind and then the discretion has to be exercised judiciously. But, when it comes to the exercise of discretion, then it depends much on the facts of each case and therefore, no straight jacket formula can be

utilized by saying that when in particular matter bail is granted, then it should be granted in other matters also. The nature of the crime, the gravity of the offence are definitely the vital aspects to be considered.

8. We agree to the submissions on behalf of the appellant that since the application 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. It is to be noted that as per the FIR, there are in all 17 accused persons. Out of them, some are members of scheduled caste itself. Therefore, it cannot be said that byway of common object between the accused persons who were not the members of scheduled caste, with the members of the scheduled caste; they would have decided to eliminate Gorakhnath. The role attributed to the present appellant is important. It is also to be seen that merely by giving instigation unless there would have been some cause / motive for the other accused persons, they would not have joined in the commission of crime. That motive, at this prima facie stage, appears to be missing. As regards the morning incident is concerned, it is only against the present appellant and it is in respect of alleged abuses given in the name of caste. As aforesaid, the application for grant of bail by the appellant before the Special Court was

under Section 439 of the Code of Criminal Procedure. Further, it is stated in the FIR as well as in the statements of the witnesses under Section 161 as well as Section 164 of the Code of Criminal Procedure that accused Manoj Itkar had called deceased Gorakhnath to the shop of Ramesh Kadam i.e. present appellant. It was by giving threats and therefore, the informant says that he had asked his father not to pay visit to the grocery shop of the accused. But then the informant says that father and grand-father were proceeding towards the end of galli after they had heard the abuses and then when they reached near the Pan shop of one Sonaba Dahare and were on the road behind the said Pan shop, deceased and injured were attacked by the other accused persons. The role attributed to the present appellant is of instigation. Definitely there is postmortem report and on the basis of the contents of the postmortem report, *prima facie* we may come to the conclusion that it is homicidal death, but whether there is evidence against the present appellant, is a question. The statements under Section 164 of the Code of Criminal Procedure are also on the same line. The statements of the eye witnesses are corroborative to the contents of the FIR, but the question still remains as to why other accused persons also joined the act of assault on deceased Gorakhnath.

9. The investigation is over and the charge-sheet is also filed. Under such circumstance, when the further physical custody of the appellant is not required for the purpose of investigation, he deserves to be released on bail. At the cost of repetition we would say that the role attributed to the present appellant is the instigation. To put it in other language, it can be said that there is no evidence about the active participation of the present appellant in assault on the deceased and there is no discovery at his instance.

10. The apprehension to the life of the informant and other witnesses has been expressed and therefore, by imposing suitable conditions, the liberty of the appellant can be restored. Hence following order:-

ORDER

(I) Appeal stands allowed.

(II) Order dated 21st February, 2023 passed by the learned Special Judge under the Atrocities Act and Additional Sessions Judge, Ambajogai, below Exhibit-5

in Special Atrocity Case No.90 of 2022, thereby rejecting the bail application of the present appellant, stands quashed and set aside. The said application of the present appellant stands allowed.

(III) The appellant – Ramesh S/o Pralhad Kadam be released on bail in connection with Crime No.437 of 2022 registered with Ambajogai City Police Station, Taluka Ambajogai, District-Beed for the offence punishable under Sections 143, 147, 148, 149, 120-B, 302, 324, 326, 504 of the Indian Penal Code and Sections 3(2)(v) and 3(1)(r)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

(IV) The appellant shall not enter the jurisdiction of village Chanai, Taluka-Ambajogai, District-Beed till the conclusion of the trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed

residence with his mobile number to the trial Court as well as to the investigating officer.

(V) Appellant shall not tamper with the evidence of the prosecution in any manner.

(VI) Appellant shall not indulge in any criminal activity.

(VII) Bail before the trial Court.

[Y.G. KHOBRADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAY23