

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.264 OF 2023

Manoj Shivaji Mhaske
Age: 28 years, Occu.: Labour,
R/o. Matoshri Nagar, Rahuri Khurd,
Tq. Rahuri, Dist. Ahmednagar

.. Appellant

Versus

1. The State of Maharashtra
Through Police Station Rahuri,
Dist. Ahmednagar.
2. Prem Prasad Shendge
Age: 18 years, Occu.: Driver,
R/o. Matoshri Nagar, Rahuri Khurd,
Tq. Rahuri, Dist. Ahmednagar.

.. Respondents

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Mr. S. E. Shekade, Advocate for appellant.
Mr. A. M. Phule, APP for respondent No.1 – State.
Ms. Sabahat T. Kazi, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 6th July, 2023

ORDER :-

. 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”) by the original accused to challenge the order below Exhibit-04 i.e. the application under Section 439

of the Code of Criminal Procedure filed by him in Special Case No.24 of 2023 before learned Special Judge, under the Atrocities Act/Additional Sessions judge, Court No.3, Ahmednagar on 08.03.2023. The appellant has been arrayed as accused in Crime No.521 of 2022 registered with Rahuri Police Station, Dist. Ahmednagar for the offences punishable under Sections 324, 323, 326, 341, 337 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act and he has been arrested on 14.12.2022. The said FIR came to be lodged on the basis of information given by respondent No.2.

2. Heard learned Advocate Mr. S. E. Shekade for the appellant, learned APP Mr. A. M. Phule for respondent No.1 – State and learned Advocate Ms. Sabahat T. Kazi for respondent No.2.

3. It has been submitted on behalf of the appellant that now the investigation is over and charge-sheet is also filed. Therefore, the further physical custody of the appellant is not required for the purpose of investigation. The contents of the FIR and the entire charge-sheet would show that the allegations are that the present appellant had pelted two stones towards informant, which had hit from the front side and another from the backside of his head and it is stated that when he fell down, the accused wanted to assault by a big stone, yet the informant got up and ran from the said place. The medical certificate issued by Maccare Super

Speciality Hospital dated 25.06.2022 would show that he had sustained two injuries i.e. CLW forehead, which was simple in nature and another was left ear bleed assault fracture of left temporal bone (mastoid part) and it is stated to be grievous in nature. When the entire evidence is over and the further physical custody of the appellant is not necessary, the learned Trial Judge ought to have released the appellant by imposing conditions. He, therefore, prayed for setting aside the impugned order and releasing the appellant on bail.

4. Per contra, the learned APP as well as learned Advocate Ms. S. T. Kazi, who came to be appointed to represent respondent No.2 through Legal Aid, strongly objected the appeal and supported the reasons given by the learned Trial Judge. It is submitted that there is evidence against the present appellant. The witnesses are from the same area, where the accused as well as the informant resides. Therefore, there is danger to the life of respondent No.2 and the witnesses. The informant being member of scheduled caste, the offence has been committed against him, which is antisocial. The informant is aged 18 years only and, therefore, this is not a fit case where the discretion should have been used by the learned Special Judge.

5. At the outset, we would like to say that the application which was before the learned Special Judge was under Section 439 of the Code of

Criminal Procedure, which presupposes that the appellant has been arrested and as regards the present appeal is concerned, the application Exhibit-04 was filed after the presentation of charge-sheet i.e. Special Case No.24 of 2023. When the entire investigation is over and charge-sheet is filed, then it was expected that the evidence should have been considered by the learned Special Judge, which has been tried to be brought on record through the charge-sheet. Bail cannot be rejected only by saying that it is a serious case. Every case which has been prescribed to be tried by the learned Sessions Judge/Additional Sessions Judge or Special Court is always serious in nature. That does not mean that every bail application by the accused in such case should be rejected. No doubt, the informant is 18 years of age, but it is also to be seen that the accused is 28 years old.

6. The FIR would disclose that around 8.30 p.m. on 16.06.2022, accused obstructed the informant when he was going towards his house and accused told that informant should bring Gutkha packets for him. Informant told him that since he is tired from the work, the accused should bring the packets himself. The accused got annoyed, slapped informant and abused in the name of caste. Informant then went to his house and told the incident to his parents. Informant does not say that what he himself and his parents decided to do in respect of the said incident. There appears to be no reaction at all. The informant further says that around 11.15 p.m., his

friend called him outside the house by giving a phone call to him. They had chat with each other and thereafter his friend left for his house. Informant was then coming back to his house at that time the accused threw stone towards informant, which hit him on the forehead, as a result of which, he sustained bleeding injury. He started running and then accused pelted second stone, which hit him on the backside of the head. He then fell down and at that time, the accused had lifted a big stone to assault him, but informant got up and ran towards Satdevi Mandir and sat there. At that time one Jagannath Dhotre, Bhausahab Mantode, Sachin Fugare residing in his lane went there and they took him to hospital, from where his parents were informed. From Government Hospital, Rahuri, he was referred to Civil Hospital, Ahmednagar. From Nagar, he was shifted to Maccare Hospital, Ahmednagar. If we consider the other evidence, it can be seen that the statements of parents appear to be hearsay. As regards the other three names which have been taken in the FIR, informant given a phone call to Jagannath Dhotre and called near Satdevi Mandir. He along with Om Sachin Fugare and Bhausahab Mantode then shifted informant to hospital. As regards the incident is concerned, the statements of these three witnesses also appear to be hearsay. The stones have been seized from the spot under spot panchanama and after the arrest of appellant, his clothes have been seized under Section 27 of the Indian Evidence Act. Therefore, with this evidence, we find that discretion ought to have been

used by the learned Special Judge. The rejection of application was mechanical and, therefore, deserves to be set aside.

7. As regards the apprehension expressed by respondent No.2 and the prosecution is concerned, it can be taken care of by imposing conditions.

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, Court No.3, Ahmednagar below Exhibit-04 in Special Case No.24 of 2023 dated 08.03.2023, stands set aside. The said application stands allowed.
- iii) Appellant – **Manoj Shivaji Mhaske**, who has been arrested in connection with Crime No.521 of 2022 registered with Rahuri Police Station, Dist. Ahmednagar for the offences punishable under Sections 326, 341, 337, 323, 324 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act, be released on PR. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

iv) The appellant shall not visit and reside in Rahuri, Taluka Rahuri, District Ahmednagar till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his mobile numbers as well as the mobile numbers of his two relatives to the Trial Court as well as to the Investigating Officer.

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

vi) He shall not indulge in any criminal activity.

vii) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm