

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.267 OF 2023

1. Sagar Ganpat Kharat
2. Rohan @ Sunny Ganpat Kharat .. Appellants

Versus

1. The State of Maharashtra
2. Aruna Sheshrao Avhad .. Respondents

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Mr. Satej S. Jadhav, Advocate for the appellants.
Mr. R. D. Sanap, APP for the respondent – State.
Mr. V. A. Chavan, Advocate for respondent No.2 (Appointed).
Mr. S. S. Nade, Advocate for respondent No.2.

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

DATE : 30th March, 2023.

ORDER :-

1. Learned APP submits that there is compliance of provisions of Section 15-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, however, respondent No.2 has not caused appearance and, therefore, Mr. Vishal A. Chavan is appointed to represent the cause of respondent No.2.

2. Appellants to supply copy of the appeal memo to the learned Advocate who is appointed for respondent No.2 today itself and the

matter would be taken today at 2.30 p.m. in view of the fact that the temporary bail has been prayed.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

3. In the morning session, when it was informed that respondent No.2 – informant was served and it was found that she has not caused appearance, learned Advocate Mr. Vishal A. Chavan was appointed to represent the cause of respondent No.2, however, when the matter was taken up in the afternoon session, learned Advocate Mr. S. S. Nade submits that he has instructions to appear for respondent No.2. He may file his Vakalatnama during the course of the day.

4. Present appeal has been filed for a limited prayer for releasing the appellants on temporary bail as the appellants want to perform the rituals upon completion of one year of death of their father.

5. It will not be out of place to mention here that the appeal filed by the appellants challenging the rejection of their bail application by the learned Special Judge, Aurangabad in Sessions Case No.317 of 2022 was rejected by this Court.

6. Though the appellants were seeking temporary bail and had approached the concerned Court by filing application Exhibit-45, it appears that the learned Special Judge rejected it on 20.03.2023. Hence, this appeal challenging the said order.

7. Heard learned Advocate Mr. Satej S. Jadhav for the appellants, learned APP Mr. R. D. Sanap for respondent No.1 – State, learned Advocate Mr. S. S. Nade and learned Advocate Mr. Vishal A. Chavan (Appointed) for respondent No.2.

8. As aforesaid, we are considering the matter for a limited purpose. The father of the appellants expired on 28.03.2022 and it is stated that there was a ritual upon the completion of one year, which was required to be performed as per the customs and traditions. It was scheduled on 28.03.2023, however, they have postponed it. It is now submitted that the mother of the appellants is of the opinion that both the appellants, who are the brothers, should perform the said ritual and, therefore, they are seeking temporary bail of five days. Similar prayer was made by them before the learned Trial Court. In fact, in such cases, the Trial Court should be sympathetic. The sentiments of the family members should be respected, at the same time the other parameters, especially the safety of the prosecution witnesses should be considered. Such applications can

be allowed by imposing conditions. The merits may not be considered at that time and though a particular period is prayed for releasing them on bail, yet it can be reduced in order to suit the needs.

9. Learned APP informs that the Special Case has been kept for framing of charge on coming Monday i.e. 03.04.2023. Under such circumstance, we do not want to disturb that schedule, but the postponed ritual can be performed from 04.04.2023 onwards and, therefore, taking humanitarian approach and also considering the interest of the respondents, we would impose conditions.

10. With these observations, we pass the following order :-

ORDER

- (i) The appeal stands partly allowed.
- (ii) The order passed below Exhibit-45 in Sessions Case No.317 of 2022 pending before the learned Special Judge, under the Atrocities Act, Aurangabad on 20.03.2023, stands set aside. The application Exhibit-45 in the said Sessions Case stands partly allowed.

(iii) Both the appellants viz. (1) **Sagar Ganpat Kharat** and (2) **Rohan @ Sunny Ganpat Kharat** be released on temporary bail for three (3) days i.e. 04.04.2023, 05.04.2023 and 06.04.2023 on P.R. Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.

(iv) The bail compliance be made before the learned Special Judge on or before 03.04.2023.

(v) If the bail papers are complied prior to 03.04.2023, the jail authority should see that both the appellants are released from jail before 08.00 a.m. on 04.04.2023.

(vi) The appellants should remain present before the CIDCO Police Station, Aurangabad on each day i.e. 04.04.2023, 05.04.2023 and 06.04.2023 between 7.00 a.m. to 8.00 a.m. and 7.00 p.m. to 8.00 p.m.

(vii) We make it very clear that both the appellants should return back to the jail on or before 11.00 a.m. on 07.04.2023.

(viii) They shall not try to tamper with the evidence of the prosecution in any manner.

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

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm