

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

CRIMINAL APPEAL NO.77 OF 2021

THE STATE OF MAHARASHTRA

VERSUS

SAGAR DEVIDAS DEOKAR

...

Mr. R.V. Dasalkar, APP for appellant

Mr. R.P. Mote, Advocate for respondent

...

WITH

CRIMINAL APPEAL NO.272 OF 2022

ALKABAI W/O BALASAHEB GAIKWAD

VERSUS

SAGAR DEVIDAS DEOKAR AND ANOTHER

...

Mr. A.G. Jadhav, Advocate h/f Mr. R.S. Sadaphule, Advocate for appellant

Mr. R.P. Mote, Advocate for respondent No.1

Mr. R.V. Dasalkar, APP for respondent No.2

...

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

RESERVED ON : 16th MARCH, 2023

PRONOUNCED ON : 21st APRIL, 2023

ORDER :

1 Both the appeals have been filed under Section 14 A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order passed by learned Special Judge/Additional Sessions Judge, Vaijapur, Dist. Aurangabad below Exh.8 in Special Case No.28/2020 on 19.08.2020, thereby granting bail to the respondent who was an accused in Crime No.105/2020 registered with Vaijapur Police Station for the offence punishable under Section 450, 307, 302 read with Section 34 of the Indian Penal Code, 1860, under Section 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 25(4) of the Indian Arms Act, 1959.

2 Criminal Appeal No.77 of 2021 has been filed by the State, whereas Criminal Appeal No.272 of 2022 has been filed by the original informant.

3 Heard learned APP Mr. R.V. Dasalkar for State, learned Advocate Mr. A.G. Jadhav holding for learned Advocate Mr. R.S. Sadaphule for original informant and learned Advocate Mr. R.P. Mote for the respondent – original accused No.3.

4 Both the Advocates for the appellants have submitted that the learned Special Judge while considering the bail application of the respondent – original accused under Section 439 of the Code of Criminal Procedure has not considered the evidence that has been collected against him. In fact, by the said application itself the applications Exhs.6 and 7 which were in respect of bail to original accused Nos.1 and 2 were rejected, however, application Exh.8 filed by the present respondent – accused No.3 has been granted. Learned APP has taken us through the record and submitted that there was ample evidence against accused No.3 to show his involvement. He was involved in plotting of murder of deceased Amol. In fact, the respondent Sagar happens to be the relative of the main accused Nos.1 and 2. In his role as conspirator, Sagar has done positive acts and evidence to that effect has been led. Witness Rohit Gedam's statement appears to have been overlooked by the learned Special Judge, wherein he had stated that around 1.00 a.m. on 15.03.2020 when Sagar had come back to site his clothes were blood stained and at that time when he asked Sagar as to how it has happened. Sagar has given extra judicial confession. Further statement of witness Shubham Kanke is also on the same line. Under such circumstance, the bail order ought not to have been passed in favour of accused Sagar.

5 Learned APP relied on the decision in **Dipak Yadav vs. State of U.P and another** reported in **2022 LiveLaw (SC) 562**, wherein it has been observed that -

“Cancellation of bail cannot be limited to the occurrence of supervening circumstances. The illustrative circumstances where the bail can be cancelled would be :

- a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.
- b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses, especially when there is prima facie misuse of position and power over the victim.
- c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.
- d) Where bail has been granted on untenable grounds.
- e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.
- f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him from the bail and thus cannot be justified.
- g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.”

On these grounds he prayed for cancellation of bail. Learned Advocate appearing for the original informant adopted those submissions and further submitted that release of Sagar on bail has caused danger to the life of witnesses.

6 At the outset, we would like to say that after going through the impugned order we could not find that original informant/victim was heard by learned Special Judge. Here, the offence involved is also under the Atrocities Act. Section 15 A (3) of the Atrocities Act gives right to the victim or his dependent to reasonable accurate and timely notice of any Court proceedings including any bail proceedings. We would like to rely on the decision of Hon'ble Supreme Court in **Hariram Bhambhi vs. Satyanarayan and another** reported in **AIR 2021 SC 5610**, wherein following are the observations -

“21. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights

of the accused as well.”

It has been also observed that the provisions of sub-section (3) of Section 15-A of the Atrocities Act which stipulates the requirement of notice and of sub-section (5) which confers a right to be heard must be construed harmoniously. The requirement of issuing notice facilitate the right to be heard. It has been held to be a substantive right that has been given to the victims which have been enacted by Parliament as a measure of protecting the constitutional rights of persons belonging to the Scheduled Castes and Scheduled Tribes. It has been harped upon that such right must be complied with and enforced conscientiously. Here, in this case, none of the appellants have taken this ground for cancellation of bail, however, we are considering it from the point of view of a legal point. No doubt, there appears to be no compliance of Section 15 A(3) of the Atrocities Act; yet, the other circumstances are now required to be considered here. As aforesaid, the impugned order was passed on 19.08.2020. The case is now part heard. Though the State has filed the Criminal Appeal No.77 of 2021 within limitation, in a sense that it was immediately filed, but it appears that it was not properly persuaded. It was filed on 11.02.2021. The appellant in Criminal Appeal No.272 of 2022 has filed the appeal on 30.03.2022 and it is stated that the benefit of lock-down period was given. Hence, the appeal is

within limitation. Thus, it can be seen that the original informant herself was not diligent enough in pursuing the matter further. If we consider the appeal, then, there is no statement that she was not aware about the impugned order or came to know about the said order at much later point of time. She has also not filed on record any such incidences amounting to breach of the order of bail by accused No.3 Sagar. Though she has stated that it is danger to her life but when no such incidence has taken place, we cannot presume. Though learned Advocate appearing for accused Sagar relied on **Jyoti w/o Nitin Mandole vs. State of Maharashtra in Criminal Appeal No.444 of 2019** decided on 08th August, 2019, the position in respect of the law point has been clarified in **Hariram Bhambhi** (supra). Now, the case is part heard and there is no instances of breach of conditions by accused Sagar. Evidence against him appears to be in the nature of extra judicial confession, which is weak in its nature and, therefore, we do not find that case is made out to take away his liberty. Both appeals, therefore, stand dismissed.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)