

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

913 CRIMINAL APPEAL NO. 303 OF 2023

SHAIKH ADIL S/O SHAIKH HUSSAIN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellant : Mr. Suraj R. Bagal
APP for Respondent-State : Mrs. V. S. Choudhari
Advocate for Respondent No.2 : Ms. Harsha R. Lomate (appointed)

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

DATED : 08 JUNE 2023

PER COURT :-

1. The present appeal has been filed by original accused no.2 under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short, "Atrocities Act"] Act to challenge the order of rejection of his application Exhibit 3 in Special Case No. 54 of 2022 by learned Special Judge under the Atrocities Act/Additional Sessions Judge-2, Nanded dated 27.12.2022. The said application was filed under Section 439 of the Code of Criminal Procedure [Cr.P.C.]. The applicant has been arrayed as accused in C.R. No. 233 of 2022 registered with Nanded Police Station, District Nanded for the offence punishable under Sections 302, 307 r/w 34 of the Indian Penal Code [IPC] and Section 3(2)(va)

of the Atrocities Act. The same crime came to be registered on the basis of the FIR lodged by the present respondent no.2.

2. Heard Mr. Suraj R. Bagal, learned Advocate for the appellant, Mrs. V. S. Choudhari, learned APP for the State and Ms. Harsha R. Lomate, learned Advocate for respondent no.2

3. It has been vehemently submitted on behalf of the appellant that the learned Special Judge has not considered the entire evidence before him. The day on which the application for bail was preferred, already the charge-sheet was filed. Therefore, custody of the appellant was not required for the purpose of investigation. The contents of the FIR would show that the allegations against the present appellant are in respect of causing injuries to the informant and not to the deceased. The deceased is a friend of the present informant and it is stated that both of them were in fact dancing in a procession that was conducted on account of Dr. Babasaheb Ambedkar Jayanti on 14.04.2022. The incident is stated to have taken place at around 8.00 p.m. in front of Vasantrao Naik College. Both the accused were obstructing deceased as well as informant while dancing and when deceased Sachin @ Banti Thorat asked co-accused Kishor Thakur and the present appellant to go away, at that time,

Kishor got annoyed and took out knife from his waist and gave blows to Sachin. When informant wanted to save his friend, he took out a blade and caused injury to the face of co-accused Kishor Thakur. The knife from the hand of accused Kishor fell down and then it was picked up by the present appellant. By saying that he will not leave the informant, the appellant-accused pointed a blow of knife towards the chest of the informant. However, the informant put his hand to save himself as a result of which, the blow was received on his hand and lip. He received injuries. Thereafter, both of them were taken to hospital where Sachin was declared dead. These allegations would show that it is under Section 307 of IPC against the present appellant. The knife has been recovered from the possession of co-accused Kishor. Medico legal certificate of the informant would show that he has received two simple injuries, one on the right wrist and another on the right angle of the mouth. When the investigation is over, and nothing is required to be recovered from the appellant, the learned trial Judge ought to have released him on bail. There are statements of only one eye witness. The statement under Section 161 of Cr.P.C. does not support the assault by present appellant to the informant, but in his supplementary statement which has been recorded after about 14 days, he has made the said statement and then in his statement under Section 164 of Cr.P.C., the said eye witness has

supported the informant. When it was a procession, there ought to have been more eye witnesses but the statements of said witnesses would show that they are hearsay witnesses. With this material on record, the appellant need not be kept in jail.

4. Learned APP as well as learned Advocate appointed to represent the cause of respondent no.2-informant, as he failed to appear in spite of serving notice by this Court, have objected the appeal and supported the reasons given by the learned trial Judge. A specific role has been attributed by the informant in the FIR to the present appellant and the contents of the FIR would show that with some specific intention, both the accused were obstructing the deceased and the informant. The present appellant had picked up the same knife which had fallen from the hands of co-accused Kishor and then with specific utterance that the informant would be eliminated, the blow was given. Therefore, he had the intention to kill the informant and therefore, though the medico legal certificate states that the informant has received simple injuries, yet the intention was to kill him. Admittedly, the deceased as well as the informant are the members of scheduled caste. There is ample evidence against the appellant and the co-accused and therefore, rejection of the application preferred by appellant was justified.

5. At the outset, at this stage, the available material is required to be considered. The same material was before the learned trial Judge. As aforesaid, the application under Section 439 of Cr.P.C. was filed after filing of the charge-sheet and therefore, the Special Judge was dutybound to consider the material that was placed before him by way of charge-sheet. A very cryptic order has been passed while rejecting the said application. Time and again this Court as well as the Hon'ble Supreme Court have given guidelines as to how a bail order should be written by any court of law and what has to be considered while considering such applications. Though it appears that when application Exhibit 3 was filed by the present appellant, notice was issued to the victim i.e. present informant, but the order that was passed by the Special Judge on 27.12.2022 is silent as to whether that notice was served on the informant or not. If it was served, then, whether he had caused his appearance or not cannot be gathered from the said order. When the Hon'ble Supreme Court has held that Section 15-A of the Atrocities Act gives a right to the victim to get the knowledge about filing of the bail application and he can resist the bail application after receipt of the notice, then, every Judge under the Atrocities Act dealing with application for bail should see that whether the victim is represented or not; in other words, whether he receives the legal aid or not. If he is unable to engage a lawyer for any

reason, then the concerned Judge under the Atrocities Act has two options. He can refer, if the victim is present before him, to the District Legal Services Authority for getting legal aid under the Legal Services Authorities Act, 1987 and if in spite of serving notice such victim remains absent, then, the Special Judge can appoint an *amicus curiae* to represent the case of such victim at the State exchequer. In any event, it should be seen that the victim does not go unrepresented. All these exercises have not been done in this case. However, when we are dealing with the appeal, only on this point we need not remit the case back to the concerned court for requirement of the said procedural aspect as it would be time consuming.

6. Now coming to the merits, the contents of the FIR as aforesaid would show that as regards the role of the appellant is concerned, it is giving blow with knife to the informant and it is stated that he has used the same knife which was used by co-accused Kishor Thakur to inflict blows on deceased Sachin. The said knife has been recovered at the instance of co-accused. What we can get from the medico legal certificate is that the present informant has suffered simple injuries. It would be for the trial court to consider as to whether it attracts Section 307 of IPC. We will have to take a note of the supplementary statement that was give by the present informant which was recorded

after two weeks which states that the informant has also used a blade to cause injuries to both the accused. The medico legal certificates of both the accused are collected by the Investigating Officer. Further, we could get the statement of one Ukaji Savle. His supplementary statement has also been recorded and also statement under Section 164 of Cr.P.C. The statements of other witnesses appear to be hearsay. With this material and the fact that the investigation is over and charge-sheet is filed, the appellant need not be kept behind bar. Learned Special Judge has not considered all these aspects and therefore, the impugned order deserves to be set aside. Hence the following order:

ORDER

- I. Criminal Appeal stands allowed.
- II. The order passed below Exhibit 3 in Special Case No. 54 of 2022 by learned Special Judge under the Atrocities Act/Additional Sessions Judge-2, Nanded on 27.12.2022 stands quashed and set aside.
- III. The application Exhibit 3 in Special Case No. 54 of 2022 stands allowed.
- IV. The appellant be released on PR and SB of Rs.50,000/- and two or more solvent sureties of Rs.25,000/- each.

V. The appellant shall not tamper with the evidence of prosecution in any manner and shall not commit any criminal activity.

VI. The appellant shall remain present before the learned Special Judge once in six months, till final hearing and disposal of the Special Case, commencing from the date he tenders bail papers and thereafter, the Special Judge to fix dates for his subsequent appearance.

VII. In case of two consecutive defaults on the part of the appellant to remain present before the Special Court, the Special Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the appellant.

VIII. Bail before the Special Judge.

IX. Fees of the learned Advocate appointed to represent the cause of respondent no.2 is quantified at Rs.5,000/-, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]

[SMT. VIBHA KANKANWADI, J.]

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