

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.317 OF 2023

1. Yogesh s/o Namdev Dhande
Age: 35 years, Occu.: Agriculturist,
R/o. Daithana, Tq. Ghansawangi,
Dist. Jalna

2. Mohan s/o Namdev Dhande
Age: 29 years, Occu.: Agriculturist,
R/o. Daithana, Tq. Ghansawangi,
Dist. Jalna.

.. Appellants

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Ambad,
Tq. Ambad, Dist. Jalna.

2. The Sub Divisional Police Officer,
Ambad, S.D.P.O. Office,
Ambad, Dist. Jalna.

3. Shashikala w/o Dshrath Kamble
Age: 46 years, Occu.: Household & Agri.,
R/o. Daithana, Tq. Ghansawangi,
Dist. Jalna.

.. Respondents

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Ms. Ashwini Lomte h/f Mr. S. J. Salunke, Advocate for appellants.
Mrs. V. S. Choudhari, APP for respondent Nos.1 and 2 – State.
Mr. V. A. Chavan, Advocate for respondent No.3 (Appointed).

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

DATE : 13th June, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. 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") to challenge the order of rejection of application under Section 439 of the Code of Criminal Procedure Exhibit-10 in Special Case No.17 of 2023 passed by learned Special Judge, under the Atrocities Act, Ambad, Dist. Jalna on 02.03.2023. The present appellants are the original accused Nos.2 and 4.

2. Present respondent No.3 lodged FIR with Ambad Police Station, Dist. Jalna against the present appellants and their two brothers Dnyaneshwar and Mohan and one Shivraj Datta Adude, which came to be registered vide Crime No.848 of 2022 for the offences punishable under Sections 307, 323, 324, 326, 452, 354, 354-A, 143, 147, 148, 149, 504 of Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act. The charge-sheet is filed on 13.02.2023 and thereafter, in the said special case, application Exhibit-10 was filed for bail under Section 439 of the Code of Criminal Procedure. As aforesaid it came to be rejected. It is rejected mainly on the ground that there was previous bail application filed by the appellants bearing Bail Application No.421 of 2021, which came to be rejected on 16.01.2023 by giving observations. Those observations have been quoted by the learned Special Judge and then it is

stated that filing of charge-sheet subsequent to the said application is not the change in circumstance. Further, another criminal case i.e. R.C.C. No.35 of 2019 is filed against the present appellants. In that case, they were not appearing and, therefore, Non Bailable Warrant came to be issued. Thus, they are not cooperating with the law and the Court and when they are misusing their liberty, they are not entitled to get bail.

3. Heard learned Advocate Ms. Ashwini Lomte holding for learned Advocate Mr. S. J. Salunke for the appellants, learned APP Mrs. V. S. Choudhari for respondent Nos.1 and 2 – State and learned Advocate Mr. V. A. Chavan, who is appointed to represent the cause of respondent No.3.

4. The learned Advocate appearing for the appellants is relying on the fact that the learned Special Judge had not considered again the merits of the case and relied on the observations passed by him on the earlier occasion, when at that time the charge-sheet was not filed. The earlier bail application also came to be rejected on the ground that since 2020 the accused persons were not attending R.C.C. No.35 of 2019 and warrant came to be issued, thereby apprehension was raised that the appellants will not abide by the terms of the bail. Without touching the merits of the case, the application ought not to have been rejected in a summary way. Further, subsequently the application filed by Dnyaneshwar at Exhibit-14 for bail under Section 439 of the Code of Criminal Procedure, whose earlier

application was also rejected on the same ground, has been granted bail by the same Court by order dated 30.05.2023 and therefore, on the ground of parity, the appellants deserve to be released on bail. The Non Bailable Warrant issued against the appellants as well as Dnyaneshwar in R.C.C. No.35 of 2019 has been cancelled by the concerned Court by imposing penalty. The said penalty has been deposited by the appellants.

5. Per contra, the learned APP as well as learned Advocate Mr. V. A. Chavan, who is appointed to represent the cause of respondent No.3, submitted that even if we consider the merits of the case, then the role of the appellants would make it clear that the appellants are the sand mafia's. They have used sharp weapon like sword and blunt weapon like iron rod. If the appellants are released on bail, they would continue to create terror in the vicinity.

6. At the outset, it is to be noted that the order which was passed below Exhibit-10 cannot be said to be an order on merits. It is a very cryptic order and what was mainly considered was his own observations in Bail Application No.421 of 2021 decided on 16.01.2023. In fact, filing of charge-sheet subsequently amounts to change in the circumstance, giving a right to the concerned accused to make fresh application for bail. Each bail application will have to be decided on its own merits. The support of observations in the earlier order can be taken, but it cannot be the sole

reason to reject a fresh bail application. The impugned order in this case is passed on 02.03.2023 and the same judge has passed fresh order on 30.05.2023 releasing the co-accused Dnyaneshwar, who was similarly situated. He was also involved as accused in R.C.C. No.35 of 2019 and warrant was issued against him, but then when it was pointed out to the learned Special Judge that the said order of Non Bailable Warrant against accused Nos.1 to 3 was cancelled by the concerned Court by imposing penalty, the bail has been granted.

7. It will not be out of place to mention here that by our order dated 02.05.2023, we had called upon the accused to produce the application for cancellation of warrant in R.C.C. No.35 of 2019. Accordingly, the copy of Exhibit-19 and Exhibit-21 from that case has been produced. Exhibit-19 would show that it was informed to the concerned Judicial Magistrate First Class, Ambad that the accused in R.C.C. No.35 of 2019 are in the judicial custody in Crime No.848 of 2022 and for cancellation of warrant, the accused themselves asked for the production warrant to be issued to the jail authorities for producing them before the Court. That application came to be allowed on 09.03.2023. What we can find from the said application is that none of the accused or the applicant had signed it, though space has been left and it is signed by the Advocate only. The application Exhibit-21 is also produced before us, which was given on 20.03.2023. It was for

cancellation of warrant. In the said application, though it was given for three accused persons singular term has been used, as if there is only one accused in the matter. It appears that the learned Advocate, who is representing those persons, is using either printed application or format and only filling the gaps thereafter. What has been stated is that the accused had gone out of station for some important work and therefore, was unable to remain present on the date fixed before the Court, as a result of which warrant has been issued, but that should be cancelled. The learned Magistrate taking note of the fact that accused Nos.1 to 3 were produced by the jail authorities perused the record before him. It was found that the Non Bailable Warrant was issued against them on 22.09.2021, but then considering the reasons mentioned in the application, Non Bailable Warrant was cancelled subject to penalty of Rs.200/-. Though this application is not under challenge, but we will have to consider the application as it has been shown. We do not find that it was signed by the accused persons, as the names have been written at the bottom and we find that the handwriting is same. The copy of the charge-sheet of this case i.e. Special Case No.17 of 2023 has been produced by the appellants themselves in which there is arrest panchanama and also the Vakalatnama. It shows different signatures of accused Yogesh, Dnyaneshwar and Mohan, than it appeared on Exhibit-21 in R.C.C. No.35 of 2019. We again say that we are not sitting as an appellate Court considering the said application for

cancellation of bail, but we want to caution the judicial officer that they should minutely see the applications and after application of mind, should arrive at a conclusion. When apparently the accused persons were before the Magistrate, he could have ascertained whether they signed the document or not and would have questioned the Advocate as to how in place of signature of all the three accused when name is written, it is in the same handwriting. Even if we consider that it was the application on behalf of those accused persons, then it was not necessary for mentioning of name at the place, where usually the signature is put.

8. As it may, turning to the present case, the same Judge i.e. learned Special Judge dealing with Special Case No.17 of 2023 has accepted the said order passed by the learned Magistrate cancelling the Non Bailable Warrant and thereafter even held that those facts introduced by the accused permit him to entertain the second bail application. There is no hurdle in allowing the present appeal.

9. As regards the merits of the case is concerned, the first and the foremost fact is that the charge-sheet is filed after the due investigation. The recovery of the weapon appears to be mainly from the spot itself. No doubt, the witnesses have sustained grievous injuries, but definitely it would take long time to stand the trial and, therefore, the appellants need not be kept behind bar. Suitable conditions therefore are required to be

imposed. In respect of conditions to be imposed to the bail application there need not be parity. The protection of the life of the informant and the witnesses is also necessary. Further, taking into consideration the allegations and the statements of the witnesses recorded it is said that the dispute arose on account of land and also in view of the involvement of the appellants in a crime earlier, keeping them away from the village till the conclusion of the trial would be just and proper. Hence, the following order :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the Atrocities Act, Ambad, Dist. Jalna below Exhibit-10 in Special Case No.17 of 2023 dated 02.03.2023, stands set aside. The said application stands allowed.
- iii) Appellants – **Yogesh Namdev Dhande and Mohan Namdev Dhande**, who have been arrested in connection with Crime No.848 of 2022 registered with Ambad Police Station, Dist. Jalna for the offences punishable under Sections 307, 323, 324, 326, 452, 354, 354-A, 143, 147, 148, 149, 504 of Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(i) and 3(1)(w)(ii) of the Atrocities Act, be released on P.R. Bond of Rs.50,000/- each with two solvent sureties of Rs.25,000/- each.

- iv) The appellants shall not reside in Daithana, Taluka Ghansawangi, District Jalna till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the appellants should give complete address of their proposed residence with their mobile numbers as well as the mobile numbers of their two relatives to the Trial Court as well as to the Investigating Officer.
- v) They shall not tamper with the evidence of the prosecution in any manner.
- vi) They shall not indulge in any criminal activity.
- vii) Bail before the Trial Court.
- viii) Fees of learned Advocate, who is appointed to represent the cause of respondent No.3, is quantified at Rs.5,000/- to be paid by High Court Legal Services Sub Committee, Aurangabad.
- ix) Copy of this order be given to the learned Judicial Magistrate First Class, Ambad, Dist. Jalna before whom R.C.C. No.35 of 2019 is pending, for bringing to his notice the observations in the order.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm