

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

CRIMINAL APPEAL NO.350 OF 2023

- 1) Aniket Ashok Nage,
Age-20 years, Occu:Agril.,
- 2) Dinesh Pramod Rathod,
Age-34 years, Occu:Agril.,
- Both- R/o-Bokud Jalgaon,
Tq-Paithan, Dist-Aurangabad

...APPELLANTS

VERSUS

- 1) The State of Maharashtra,
At the instance of Bidkin
Police Station, Dist-Aurangabad,
- 2) Bhausahab S/o Baburao Lokhande,
Age-42 years, Occu:Agri/Business,
R/o-Bokud Jalgaon, Tq-Paithan,
Dist-Aurangabad.

...RESPONDENTS

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Mr. A.K. Bhosle Advocate for Appellants.
Mrs. V.S. Choudhari, A.P.P. for Respondent No.1.
Mr. S.G. Kawade Advocate for Respondent No.2.

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

DATE : 13th JUNE, 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Appeal has been filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act") to challenge the order of rejection of bail application under Section 439 of the Code of Criminal Procedure filed by the present appellants before the learned Special Judge under the Atrocities Act, Aurangabad on 1st April 2023 in bail application No.559 of 2023. Present appellants have been posed as accused Nos.1 and accused No.4 in Crime No.1 of 2023 registered with Bidkin Police Station, Taluka-Paithan, District-Aurangabad (Rural), for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2), 3(2)(va) of the Atrocities Act and under Sections 4 and 25 of the Arms Act.

2. Heard learned Advocate Mr. Bhosle for the appellants, learned APP Mrs. Choudhari for respondent No.1 and learned Advocate Mr. Kawade for respondent No.2.

3. After disinclination is shown to grant any relief to appellant No.1 – Aniket Ashok Nage, learned Advocate for the appellants, on instructions, seeks withdrawal of the Appeal as against appellant No.1 and there is no hurdle in allowing the said prayer. Matter proceeded for the relief claimed by appellant No.2.

4. Admit.

5. It has been submitted on behalf of appellant No.2 that perusal of the First Information Report (for short "FIR") would show that informant's brother had contested Gram Panchayat election from the panel of one Bhausahab Subhas Tarmale. Bhausahab's mother and wife of one Ashok Nage were contesting for the post of Sarpanch. Bhausahab's mother was declared as elected. Informant then states that he had asked Ashok Nage to clear the outstanding bill of his hotel for the expenses which occurred during election. At that time Ashok Nage had abused him in the name of caste by saying that:- " या चांभारड्याची झोपडी फुकून टाकील ". The elections had taken place on 18th December 2022. There was no FIR lodged by respondent No.2 – informant regarding the alleged abuses / insult in the name of the caste

nor he give the details as to where he had demanded the said amount and where those abuses were given, who were the persons present at the said spot etc.

6. It is further submitted that the contents of the FIR as regards role attributed to appellant No.2 is concerned, would disclose that name of Dinesh Rathod is appearing in respect of both the incidences, one alleged to have happened with witness / victim Vikas in front of the hotel and the second which had allegedly occurred near the house of one Bandu Kolhe. It is stated that appellant No.2 was holding knife. But the statements under Section 313 of the Code of Criminal Procedure of the victim as well as other witnesses would show that appellant No.2 has not used the said knife thereby he has not caused injury with the help of that knife. Now the investigation is over and charge-sheet is also filed. Under such circumstance, his custody is not required. The application under Section 439 of the Code of Criminal Procedure, in respect of appellant No.2, ought to have been allowed by the learned trial Judge.

7. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the Appeal and supported the reasons given by the Special Judge under the Atrocities Act while rejecting the application for bail filed by present appellant No.2. It has been submitted that Bhausaheb Tarmale is in fact real victim who had suffered injuries by knife and it was the intention to kill him. Said Bhausaheb Tarmale is the District President of Nationalist Congress Party and he was hospitalized from 31st December 2022 to 14th January 2023 in Intensive Care Unit and thereafter from 15th January 2023 to 20th January 2023 in General Ward. The accused persons are still giving threats to the informant and the witnesses involved in this case and therefore another crime alleging that they have committed offence under Section 506 of the Indian Penal Code has been registered on 19th February 2023 with same police station by Bhausaheb Tarmale against one Lahu Bhimrao Nage. Appellant No.2 would create terror. Further, present appellant No.2 has criminal antecedents. Offence punishable under Sections 363, 364, 364-A, 365, 323, 504, 506 read with Section 34 of the Indian Penal Code bearing Crime No.297 of 2022 is

registered against him. Therefore, it would be dangerous to the life of the informant and the witnesses.

8. At the outset it is to be noted that settled principle of law is that merely an accused is involved in previous crime his bail application in the subsequent case cannot be rejected solely on that count. His involvement and the role attributed to him in the second case is also required to be considered apart from the other factors those are required to be considered while considering bail application. It appears that the earlier crime is based on some loan transaction and therefore, it cannot be said that it has any connection with the present case. It appears from the FIR that informant Bhausahab, is running a hotel in village Bokud Jalgaon. He had supplied food articles to Ashok Nage on credit at the time of election and then after the elections, he had demanded his amount due, which was refused by Ashok Nage. Now it is required to be proved by the prosecution that appellant No.2 is a party-man for said Ashok Nage and appellant No.2 was having common intention in the act. It is then stated that around 10.45 p.m. on 31st December 2022 incident took place with Vikas outside the hotel and at that time the informant was in his

house. If we consider the statement of Vikas under Section 161 of the Code of Criminal Procedure, it is stated that appellant No.2 who was alleged to be along with other accused, had assaulted him by fists and kicks but then Vikas escaped and started running towards the village. Alleged abuses in the name of caste are not attributed to appellant No.2. Vikas says that while he was running, he gave phone call to Bhausahab Tarmale about the said incident and when he was near house of Bandu Kolhe, at that time Bhausahab Tarmale, Sayaji Kolhe, Rameshwar Lokhande joined Vikas. When Bhausahab was asking about the incident to Vikas, at that time informant, his wife and aunt came there. Two scorpio vehicles came, of which even the numbers have been given and it is stated that appellant No.2 was one of the seven persons who got down from two vehicles. It is stated that present appellant No.2 was holding knife, but none of the witnesses including the informant and the victim have stated that present appellant No.2 has used the said knife.

9. Now the investigation is over. The knife has been recovered. Under such circumstance, the further physical custody of appellant No.2 was not required. The bail application

under Section 439 of the Code of Criminal Procedure of appellant No.2 has been rejected only on the ground of previous antecedents, which appears to be wrong and therefore needs to be set aside. Appellant No.2 ought to have been released on bail. However, when we are interfering with the said order, at that time we are required to consider the conditions to be imposed on appellant No.2. The protection is required to be granted to the informant as well as witnesses, so that they can depose fearlessly. The prosecution is submitting that appellant No.2 has created his own terror in the vicinity. Under such circumstance, it is just and legal to keep him away from the village. With these observations, following order is passed:-

ORDER

(I) The Appeal stands partly allowed.

(II) On the statement made on behalf of appellant No.1, the Appeal stands dismissed as withdrawn as against appellant No.1 - Aniket Ashok Nage.

(III) Appeal stands allowed for appellant No.2 - Dinesh Pramod Rathod.

(IV) The order passed by learned Special Judge under the Atrocities Act, Aurangabad in Bali Application No.559 of 2023 dated 1st April 2023 stands set aside, so far as appellant No.2 is concerned. The application of appellant No.2 stands allowed.

(V) Appellant No.2 - Dinesh Pramod Rathod, who has been arrested in connection with Crime No.1 of 2023 registered with Bidkin Police Station, Taluka-Paithan, District-Aurangabad (Rural), for the offence punishable under Sections 307, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2), 3(2)(va) of the Atrocities Act and under Sections 4 and 25 of the Arms Act, be released on bail on P.R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

(VI) Appellant No.2 shall not reside and visit the jurisdiction of village Bokud Jalgaon, Taluka-Paithan, District-Aurangabad till conclusion of the trial. Appellant No.2 should reside elsewhere, and before submission of bail papers he should give complete address of his proposed residence with his Mobile Number to the Trial Court as well as Investigating Officer.

(VII) Appellant No.2 shall not tamper with the evidence of the prosecution in any manner.

(VIII) Appellant No.2 shall not indulge in any criminal activity.

(IX) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JUN23