

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.355 OF 2023

Santosh S/o. Rambhau Devkate,
Age : 38 years, Occu. : Labour,
R/o. Majalgaon, Tq. Majalgaon,
Dist. Beed.

(At present in Judicial Custody
in District Prison Beed)

... Appellant.

Versus

1. The State of Maharashtra,
Through Police Station Majalgaon (City)
Tq. Majalgaon, Dist. Beed.

2. Sandipan Sakharam Jadhav,
Age : 49 years, Occu. : Labour,
Dist. Beed.

... Respondents.

...

Advocate for Appellant : Mr. Prasad B. Kadam
APP for Respondent – State : Mr. S. J. Salgare
Advocate for Respondent No.2 : Mr. D. S. Patil

...

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

DATED : 22nd JUNE, 2023

PER COURT :

1. Present appeal has been filed to challenge the rejection of bail application under section 439 of the Code of Criminal Procedure, Exhibit-3 in Special Case (Atrocity) No. 8 of 2023 by the learned Special Judge (under Atrocities Act), Majalgaon on 01.04.2023.

2. The appellant is an accused in offence vide Crime No.328 of 2022, dated 30.11.2022 registered on the basis of FIR lodged by the present respondent no.2 with Majalgaon City Police Station, Taluka Majalgaon, District Beed, for the offences punishable under section 307 of Indian Penal Code (IPC), under sections 3(2)(v), 3(2)(va) of Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, 1989, under sections 4 and 25 of Arms Act, 1959 and under section 135 of Maharashtra Police Act, 1951.

3. We have heard learned advocate Mr. Prasad Kadam for appellant, learned APP Mr. S. J. Salgare for respondent - State, learned advocate Mr. D. S. Patil for respondent no.2.

4. Learned advocate for the appellant has strenuously argued that now the investigation is complete and charge-sheet has been filed, therefore, custody of the present appellant is not required for any purpose. The FIR is lodged by father of injured on the basis of the information received by him from injured. The incident has taken place in the crowded place, however there is only one eye witness whose statement under section 161 of the Code of Criminal Procedure has been recorded. Incident is stated to have taken place on 30.11.2022, however, the statement of the

injured has been recorded on 05.12.2022. There appears to be delay in recording the said statement. There are discrepancies as regards the material facts is concerned in the statement of the eye witness as well as the injured. Injured says that the accused has concealed the sword in his shirt, whereas, the eye witness says that the sword was in the hand of accused. When the entire evidence has been collected and the further custody of the appellant is not necessary, learned trial Judge ought to have released the appellant. Further, in the order itself as regards the antecedents are concerned, it has been noted that in some of the matters, the appellant has been acquitted.

5. Learned APP as well as learned advocate for respondent no.2 have strongly opposed the appeal. They are supporting the reasons given by the learned trial Judge. They submit that considering the medical evidence it can be seen that there were two grievous hurts caused to the injured. His statement has been recorded when he was still admitted in the hospital. The eye witness corroborates to the fact that it was the accused, who had given the blows of sword on the injured. The sword has been discovered by the appellant. Under such circumstance, when there is ample evidence against him, the discretion has been properly exercised by the trial court in not releasing the appellant on bail.

6. It is to be noted that the FIR has been lodged by the father of the injured. He was informed about the incident by his another son Satish at about 2.45 p.m. on 30.11.2022, by that time, the injured was shifted to hospital. The FIR came to be registered on 19:21 hours on the same day and before that the informant had met his son, he shows who was injured in the incident and had got the information about the incident from him. Statement of witness Shaikh Khayum would show that the accused was calling Kishor to Zenda Chowk and therefore, he himself and Kishor went to Zenda Chowk and then Kishor gave a phone call to accused. He says that, accused came with sword, he abused Kishor and then assault Kishor, but then Kishor resisted the same. The injury was caused to the right elbow. Second blow was given on his head, but it was resisted by left hand, it caused injury to the left palm and head. Thereafter, the accused fled away from the said place. These discrepancies cannot be appreciated at this stage. Further, the accused came to be arrested on the same day i.e. on 30.11.2022 and then while in police custody he has discovered the sword on 02.12.2022. Statement of the injured has been recorded.

7. Now, as regards the objection that statements of the other persons have not been recorded by the police is concerned,

how to appreciate will have to be left to the trial court. Another fact to be noted is that though the appellant is stated to be acquitted of the offences vide Crime No. 33 of 2010 under section 324 of IPC, Crime No.97 of 2017 under sections 326 and 504 of IPC, Crime No.312 of 2014 under sections 324, 323, 504 and 506 read with 34 of IPC, Crime No.31 of 2016 under section 326 read with 34 of IPC, Crime No.48 of 2013 under sections 143, 147, 148, 149, 323, 504 and 506 read with 34 of IPC, it appears that, Crime No.226 of 2017 under sections 307, 143, 147, 148, 149 of IPC as well as Crime No.229 of 2005 under sections 353, 332, 336, 427, 504 read with 34 of IPC are still pending against him. Though he has been acquitted from some of the offences, all the crimes appear to be against body and therefore, we do not find that it was the case to release the appellant on bail. The discretion has been properly used by the learned trial Judge and therefore, there is no necessity to interfere in the said order. Appeal stands dismissed.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)