

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

908 CRIMINAL APPEAL NO.389 OF 2023

- 1 Gajanan Sayanna Rajarwar,
Age 40 yrs., Occ. Service,
R/o Shankar Nagar, N D – 120, Guruwar Bazar,
CIDCO, Nanded, Tq. & Dist. Nanded.
- 2 Datta @ Dattatray Sayanna Rajarwar,
Age 38 yrs., Occ. Service,
R/o Shankar Nagar, N D – 120, Guruwar Bazar,
CIDCO, Nanded, Tq. & Dist. Nanded.
- 3 Dnyaneshwar Laxman Potgante,
Age 38 yrs., Occ. Agri.,
R/o Kivla, Tq. Loha, Dist. Nanded.

... **Appellants**

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station, Nanded,
Dist. Nanded.
- 2 Mahendra Namdev Gawali,
Age 31 yrs., Occ. Labour,
R/o Shankar Nagar, N D – 120, Guruwar Bazar,
CIDCO, Nanded, Tq. & Dist. Nanded.

... **Respondents**

...

Mr. B.N. Gadegaonkar, Advocate for appellants

Mr. S.D. Ghayal, APP for respondent No.1

Mr. Mohit Lalit Deoda, Advocate (appointed) for respondent No.2

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

DATE : 22nd JUNE, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 **Admit.**

2 Present appeal has been filed under Section 14 A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order of rejection of the bail application under Section 439 of the Code of Criminal Procedure by the learned Special Judge under the Atrocities Act/Additional Sessions Judge, Nanded, Dist. Nanded on 18.04.2023 on application dated 01.04.2023. The present appellants are the accused persons in Crime No.778/2022 registered with Nanded Rural Police Station, Dist. Nanded, for the offence punishable under Section 326, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860, under Section 4 punishable under Section 25 of the Indian Arms Act and under Section 3(1) (d) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The said First Information Report came to be lodged at the behest of present respondent No.2.

3 Heard learned Advocate Mr. B.N. Gadegaonkar for appellants, learned APP Mr. S.D. Ghayal for respondent No.1 and learned appointed Advocate Mr. M.L. Deoda for respondent No.2.

4 It has been vehemently submitted on behalf of the appellants that the investigation is over and charge sheet is filed. The appellants came to be arrested on 28.03.2023. Appellant Nos.1 and 2 are the Government servants. They have been falsely implicated. A concocted story has been put to implicate the appellants. There is delay of three days in lodging the First Information Report when the injuries were simple and on non vital parts. He was conscious all the time. The learned Special Judge has failed to consider that the informant had not attributed specific role to the appellants. The abuses on the caste are not alleged against any of the appellant. Though it is stated that the appellant Gajanan holding sword in his hand, there are no recitals that he has used it. The First Information Report rather states that though he was holding sword, he took iron rod from accused Ravi and then assaulted on the right hand of the informant. This is unbelievable. The informant does not belong to Scheduled Caste or Scheduled Tribe as he and his family got converted to Christianity. There is no recovery at the instance of the present appellants. The appellants are in jail since last three months. The reasons given by the learned Special Judge are cryptic and does not show

application of mind. Therefore, the said order deserves to be set aside.

5 The learned APP appearing for respondent No.1 as well as learned Advocate for respondent No.2 strongly opposed the appeal and supported the reasons given by the learned Special Judge while rejecting the bail application filed by the present appellants. The informant has received fracture to his right forearm and blunt trauma to the left leg. He was admitted in Dr. Shankarrao Chavan Government Medical College and Hospital, Vishnupuri, Nanded on 27.12.2022 at about 11.10 p.m. till 9.00 a.m. on 30.12.2022. There are eye witnesses to the incident and their statements have been recorded. Iron rod has been discovered at the instance of appellant No.1 Gajanan. One of the accused is still absconding. There are criminal antecedents against the present appellants. Accused Dnyaneshwar has discovered stick, whereas accused Dattatraya has discovered sword and dagger (khanjar). Both the Advocates have further stated that accused Dattatraya, Ravi (absconding accused) and Dnyaneshwar had criminal trespassed in the house of informant and had tried to assault the family members of the informant in order to pressurize them that the present First Information Report should be taken back and, therefore, offence vide Crime No.158/2023 came to be registered against them, for the offence punishable under Section 452, 504, 506 read with Section 34 of the Indian Penal Code,

under Section 4 punishable under Section 25 of the Indian Arms Act and under Section 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Therefore, taking into consideration this aspect there is possibility of danger to the life of the informant.

6 At the outset, it is to be noted that in respect of present case i.e. Crime No.778/2022 is concerned, the First Information Report is lodged by the present respondent No.2 in respect of incident dated 27.12.2022 and it is stated that it had occurred around 9.30 p.m. It is the story of the informant that he was sitting on cement bench in front of Hanuman Temple near his house. He was watching mobile at that time. At that time, accused Gajanan and Dnyaneshwar went there and started abusing him in the name of caste. They asked him, as to why he was sitting there. When he replied that he is watching mobile, then, they started saying that he should not sit there, and thereafter, after giving slap to him accused Gajanan told Dnyaneshwar that he should call his brothers and bring "article". After a while other accused i.e. Datta and Ravi came. Datta was holding sword, Ravi was holding iron rod and Dnyaneshwar was holding stick. After abusing the informant in the name of caste Gajanan told them that - informant is not listening to what they have said and, therefore, informant will have to be eliminated. He took iron rod from Ravi and assaulted informant on his right elbow causing

fracture to his right hand. He fell down because of the said injury and then Ravi assaulted him with kicks and fists. Dnyaneshwar assaulted with wooden stick. Accused Datta had given blows with hand and kicked him. When the informant raised hue and cry, his sister and other persons came to the spot and rescued him. While going, the accused persons abused them and told that they would kill the informant.

7 The incident is stated to have taken place on 27.12.2022 around 9.30 p.m., statement of the injured was taken around 11.00 to 11.30 p.m. on 29.12.2022 and the crime was registered around 01.49 hours on 30.12.2022. It appears that present appellants Nos.1 and 2 had tried to get anticipatory bail, however, their application was rejected by the Trial Court and then this Court had dismissed their appeal. Thereafter, they came to be arrested. The statements of witnesses have been recorded, which support the First Information Report. The evidence that has been collected shows that the informant is the member of Scheduled Caste. The alleged delay in lodging the First Information Report cannot be appreciated at this stage, as it will have to be brought on record by the prosecution that the informant was conscious, oriented and was in a fit state to give the statement only before his First Information Report was taken. The injury certificate shows that the informant has received grievous injury to his hand and two other simple

injuries. No doubt, now, the charge sheet is also filed by completing the investigation, however, there is prima facie evidence against the present appellants. Those witnesses are supporting the prosecution. The discovery of weapons is from the appellants which shows their connection with the crime. How the story given by the informant in the First Information Report is concocted will have to be then shown by the accused persons.

8 The fact which will have to be considered here is the subsequent event also. It has been reported by the prosecution that respondent No.2's father lodged complaint application with the same Police Station on 15.02.2023 that accused No.1 Gajanan had given threat to him and the witnesses in this case that they should withdraw the First Information Report. Further, the witness in this case has lodged First Information Report with the CIDCO Police Station, Nanded on 07.03.2023 stating that he was along with his parents, informant and sister in the house around 3.30 p.m. on 07.03.2023. Even at that time accused Datta and Dnyaneshwar had forcibly entered the house and started threatening by showing dagger (khanjar) that they should withdraw the case. Even at that time also threat to kill has been given. Offence vide Crime No.158/2023 has been registered, as aforesaid, against them. Therefore, we feel that when there is evidence against the accused and subsequent events also show that still they are indulging

themselves in such activity which is causing threat to the life of witnesses, then this was not the fit case to release the appellants on bail. Of course, the learned Special Judge has given cryptic reasons for rejecting the application; yet, in the appeal we have considered all the material which was before the learned Judge below. It is tried to be impressed that since accused Nos.1 and 2 are the Government servants, they deserve to be released on bail. However, at this stage, we would say that if the evidence shows that they were holding deadly weapons, then, their status as Government servants cannot be so considered.

9 Since the charge sheet is filed, the trial would take place and under such circumstance, if the trial does not get concluded within one year, then, at the most the liberty can be given to the appellants to seek bail. With these observations, following order is passed.

ORDER

1 The Criminal Appeal stands dismissed.

2 Liberty is granted to the appellants to file application for bail before the Trial Court itself, if the trial is not concluded within one year from today.

3 We direct the learned Special Judge, under the Atrocities Act, Nanded to expedite the trial and conclude it within one year from today.

4 The fees of appointed Advocate is quantified at Rs.5,000/- (Rupees Five Thousand only), to be paid by the High Court Legal Services Sub Committee, Aurangabad.

(Abhay S. Waghware, J.)

(Smt. Vibha Kankanwadi, J.)

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