

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.393 OF 2023

1. Sunil s/o Nandu Avhale
Age: 35 years, Occu.: Labour,
2. Dinesh s/o Subhash Dhangar
Age: 28 years, Occu.: Labour,

Both R/o. Dandewala Baba Nagar, Mohadi
Tq. and Dist. Dhule

.. Appellants

Versus

1. The State of Maharashtra
Through Mohadi Nagar Police Station,
Dhule.
2. Ajay s/o Vishwas Marsale
Age: 27 years, Occu.: Driver,
R/o. Dandewala Baba Nagar, Mohadi,
Tq. and Dist. Dhule

.. Respondents

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Mr. Chaitanya C. Deshpande, Advocate for appellants.
Mr. S. J. Salgare, APP for respondent No.1 – State.
Mr. V. P. Raje, Advocate for respondent No.2.

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

DATE : 19th 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”) by accused Nos.1 and 3 as per the FIR to challenge the order below Exhibit-04 in Special Case No.20 of 2023 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Dhule dated 12.04.2023, thereby rejecting their bail application under Section 439 of the Code of Criminal Procedure. Both the accused have been arrested in connection with Crime No.319 of 2022 registered with Mohadinagar Police Station, Dist. Dhule for the offences punishable under Sections 302, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r)(s) and 3(2)(v) of the Atrocities Act. Both the accused came to be arrested on 27.11.2022. The incident is stated to have taken place between 8.00 to 8.30 p.m. on 26.11.2022. The FIR is lodged by present respondent No.2, who is the brother of the deceased as well as eye witness-cum-injured.

2. Heard learned Advocate Mr. Chaitanya C. Deshpande for the appellants, learned APP Mr. S. J. Salgare for respondent No.1 – State and learned Advocate Mr. V. P. Raje for respondent No.2.

3. The prosecution story in short is that the FIR came to be lodged on 27.11.2022 by present respondent No.2. It was stated that informant resides with his mother, grandmother, wife and his younger brother resides adjacent to his house along with his wife and two children. All the accused persons are known to him as they are from the same area. When informant

Ajay and his friend Zakir Pinjari were near Rokdoba Mandir, chitchatting with each other at about 8.00 to 8.30 p.m. on 25.11.2022, accused Sagar and Dinesh (present appellant No.2) went there and told both of them that they should not sit at that place and come near the temple. If they are spotted, then their legs would be cut. At that time, appellant No.2 had assaulted Zakir with fists and hands. When informant tried to intervene at that time both the accused threatened him. On the next day, accused Sunil i.e. appellant No.1 came near the house of informant around 8.00 to 8.30 p.m. and started abusing in the name of caste. He gave threat to the informant stating that why he had quarreled with his brother, when he was along with Zakir. Informant had tried to convince him and took him near the Rokdoba Mandir at a distance of about 100 meter, at that time, accused Sagar came and abused informant in the name of caste. Accused Sunil and Sagar both had assaulted informant with hands. Then their younger brother Bablu came with appellant No.2. They also assaulted informant with fists. After hearing the noise of quarrel, the younger brother of the informant by name Amol and mother Shobhabai came to rescue informant, at that time, accused Sagar took out knife from his pant's pocket and assaulted on the nose of informant's mother. He then stabbed Amol near his left ear and left thigh as well as the blow of the knife was given on the head of Zakir Pinjari. After the accused persons saw that the thigh of the injured Amol was profusely bleeding, they fled away. Amol went running

towards the house in injured condition and, thereafter, the informant and his family members took him to Civil Hospital, Dhule. While undergoing treatment, Amol expired and, thereafter, informant went to police station and lodged the report.

4. It will not be out of place to mention here that the investigation is complete and charge-sheet has been filed in the month of January, 2023. Thereafter, both the appellants had filed application under Section 439 of the Code of Criminal Procedure vide Exhibit-04 and after hearing all the concerned, the application has been rejected by the learned Special Judge. From the impugned order, what can be seen is that it is a very cryptic order and the parameters which are laid down by Hon'ble Supreme Court and this Court for dealing an application under Section 439 of the Code of Criminal Procedure in which charge-sheet is filed, have not been followed.

5. The application has been strongly objected by the learned Advocate appearing for the informant. Hearing of the informant is mandatory in view of Section 15-A(3) and (5) of the Atrocities Act. The main concern is that there is strong evidence against the appellants. Amol died due to "hemorrhage and shock due to stab wound over left thigh". The murder weapon has been seized from accused Sagar and all the accused persons have come to the spot with common intention. The appellants are residing in the same area where the informant is residing and, therefore, if the

appellants are released, then it would be life threatening for the informant and the other witnesses.

6. Here, it is to be noted that there were two incidents on the consecutive days. Firstly, it was on 25.11.2022 at about 8.00 to 8.30 p.m.. At that time, only accused Sagar and Dinesh were stated to be present and they had abused the informant in the name of caste. However, the application that was filed by the present appellants was under Section 439 of the Code of Criminal Procedure. The bar under Section 18 and 18-A of the Atrocities Act is in respect of anticipatory bail that can be claimed under Section 438 of the Code of Criminal Procedure. Therefore, there was no bar, though it may be stated that the offence under the Atrocities Act for the abuses in the name of caste is made out from those recitals. Same is the question in respect of subsequent incident that had allegedly taken place at about 8.00 to 8.30 p.m. on 26.11.2022. As regards the present appellants are concerned, it is stated that they had assaulted the informant by fists. The use of knife to cause injury to mother of the informant, brother Amol and also to the friend of the informant - Zakir has been attributed to accused Sagar, who is not present before this Court. The statements of witnesses are also on the same line including that of injured eye witnesses. The discovery of the knife is by accused Sagar. Though *prima facie* the death of Amol appears to be homicidal in nature, yet that is not directly

attributable to the present appellants. The statements of witnesses under Section 164 of the Code of Criminal procedure are also on the same line. Now, as regards the common intention is concerned, it is to be proved by the prosecution beyond reasonable doubt. It will have to be proved that the present appellants had the knowledge of fact that Sagar was carrying knife with him. Under such circumstance, with the evidence that has been collected and placed by way of charge-sheet, the present appellants ought not to be kept behind bars till the conclusion of trial. The learned Special Judge ought to have considered the material that is before him by way of charge-sheet. Accused, in every serious offence, is not required to be kept behind bar till the conclusion of trial. What is required to be considered is the parameters those have been laid down in various authorities and, therefore, the impugned order deserves to be set aside, as the discretion is also not used in a judicious manner. When we are entertaining the bail application, definitely, we must consider the point raised on behalf of respondent No.2 that there is threat to the life of witnesses, if the appellants are released on bail, as the appellants are residing in the same vicinity. Therefore, taking into consideration the said fact, we impose condition on the appellants and liberty is granted to the prosecution to have recourse under Section 439(2) of the Code of Criminal Procedure to approach the Court, in case of breach of condition of bail by the present appellants. With these observations, following order is passed :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Dhule, below Exhibit-04 in Special Case No.20 of 2023 dated 12.04.2023, stands set aside. The said application stands allowed.
- iii) Appellants – **Sunil Nandu Avhale** and **Dinesh Subhash Dhangar**, who have been arrested in connection with Crime No.319 of 2022 registered with Mohadinagar Police Station, Dist. Dhule for the offences punishable under Sections 302, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3(1)(r)(s) and 3(2)(v) 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 visit and reside within the area of 6 kilometers from Dandewala Baba Nagar, Mohadi, Tq. and Dist. Dhule 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) The appellants shall attend the nearest police station on the first day of each month between 10.00 a.m. to 2.00 p.m. till the trial is over.

vi) They shall not tamper with the evidence of the prosecution in any manner.

vii) They shall not indulge in any criminal activity.

viii) In case of breach of conditions of bail by the present appellants, the prosecution is at liberty to approach the Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

ix) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm