

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

CRIMINAL APPEAL NO.404 OF 2023

**SHAIKH KHAYYUM SHAIKH YUSUF
VERSUS
THE STATE OF MAHARASHTRA AND ANR.**

...
Advocate for Appellant : Mr. B. R. Kedar h/f Mr. H. I. Pathan
APP for Respondent No.1/State: Mr. A. V. Deshmukh
...

**CORAM : SMT. VIBHA KANKANWADI, AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 28.06.2023

PER COURT :

1. **Admit.**

2. The present appeal has been filed under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 [hereinafter referred to as 'the Act' for short] to challenge the order dated 17/04/2023 passed by the learned Special Judge under the Act / Additional Sessions Judge - 3, Hingoli, in Criminal Bail Application No.180/2023.

3. The appellant has been arrayed as an accused in Crime No.210/2023 dated 21/03/2023 registered with Akhada Balapur Police Station, Hingoli for the offences punishable under Section 363 of IPC, to which, later on Sections 364, 302 and 201 of IPC and Sections 3(2)(5), 3(2)(va) of the Act came to be added, the said FIR came to be lodged.

On the basis of FIR lodged by present respondent no.2, notice has been issued and in the meantime, what is emerging is that the Investigating Officer and Sub Divisional Officer, Vasmat has produced a report under Section 169 of Cr.P.C. before the learned Special Judge stating that the investigation that has been carried out does not show evidence against the present appellant. What we could gather is, the learned Special Judge on 16/06/2023 appears to have called the case diary for his perusal. It is also orally informed that notice has been issued to the informant i.e. present respondent no.2. The Investigating Officer is present in the Court.

4. We are of the opinion that other procedure may be taken by the learned Special Judge but the tenor of Section 169 of Cr.P.C. which prescribes for the release of accused when evidence is deficient then if the accused is in custody of the police officer, then he should be released forthwith by executing bond and then when the accused is in magisterial custody then the report has to be submitted. What is required from the Magistrate or the concerned Judge is the similar action, the release should be forthwith when the Investigating Officer himself comes with a fact that whatever evidence he has gathered is not sufficient for forwarding the charge-sheet against the concerned accused then after taking bond, the said accused can be released. This action appears to have not been taken by the learned Special Judge and therefore, it has to be taken immediately by this Court. We clarify that the procedure which has been laid down by the Hon'ble Supreme Court when a report under Section 169 Cr.P.C. is submitted will have to be undertaken by the learned Special Judge but for that purpose, the accused need not be kept in jail or custody. Hence, the following order:

ORDER

(i) We want to place it on record that we had issued the notice to respondent no.2 / original informant appeared through an advocate. There is compliance of Section 15-A of the Act, which is mandatory. However, in view of the fact that report under Section 169 of CrPC has been filed and the procedure is required to be undertaken; whatever the informant intends to say, she can put it before the learned Special Judge before whom the said procedure would be undertaken.

(ii) The appellant be released on PR and SB of Rs.15000/-. He should give an undertaking before the learned Trial Judge that he would remain present before the Trial Court as and when called in future in respect of the present case.

(iii) Bail before the Trial Court.

(S. G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

Sameer