

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

CRIMINAL APPEAL NO.531 OF 2023

Sunil S/o Changdeo Magar,
Age-21 years, Occu:Labour,
R/o-Shikshak Society,
Paranda, Tq-Paranda,
Dist-Osmanabad.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through the Police Station Officer,
Paranda Police Station,
Paranda, Tq-Paranda,
Dist-Osmanabad,
- 2) Saurabh Kiran Bansode,
Age-26 years, Occu:Labour,
R/o-Revani, Bhimnagar,
Paranda, Tq-Paranda,
Dist-Osmanabad.

...RESPONDENTS

...
Mr. Abhijit S. More Advocate for Appellant.
Mr. S.D. Ghayal, A.P.P. for Respondent No.1 – State.
Mr. T.R. Quadri Advocate appointed for Respondent No.2.
...

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

DATE : 27th JULY, 2023

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

1. Present Appeal has been filed under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (for short "the Atrocities Act"), to challenge the order of rejection of pre-arrest bail under Section 438 of the Code of Criminal Procedure by the learned Special Judge under the Atrocities Act / Additional Sessions Judge, Paranda, District-Osmanabad on 26th May 2023 in Criminal Bail Application No.30 of 2023. Present appellant has been named as accused No.3 in the First Information Report (for short "the FIR") lodged by the present respondent No.2 vide Crime No. 132 of 2023 with Paranda Police Station, District-Osmanabad for the offence punishable under Sections 307, 323, 504, 506, 341, 143, 147, 148, 149 of the Indian Penal Code and 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act.

2. Heard learned Advocate Mr. More appearing for appellant, learned APP Mr. Ghayal appearing for the State and learned Advocate Mr. Quadri, appointed to represent respondent No.2.

3. It has been vehemently submitted on behalf of the

appellant that the appellant himself is a member of scheduled caste and therefore, the offence under the Atrocities Act cannot be said to be attracting against him. Even the certificate of caste validity in respect of father of the present appellant was produced before the learned Special Judge along with the caste certificate of the appellant. The learned Special Judge also observed that the offences under the Atrocities Act are not made out against the present appellant but the bail application was rejected as Sections under the Indian Penal Code are there, especially Section 307 of the Indian Penal Code and it is said that the scythe used in the commission of crime is required to be recovered. The learned Special Judge failed to consider that the allegations are basically against co-accused and not the present appellant. There is delay of six days in filing the FIR. The informant had sufficient time to concoct the story. It is unbelievable that two other persons were assaulting the informant by scythe and then the present appellant and another accused, by saying that they should also be allowed to assault the informant, took the scythe from the co-accused and then assaulted the informant. This is an unbelievable story and therefore, the application ought to have been allowed.

4. Per contra the learned APP and learned Advocate appointed to represent the cause of respondent No.2, strongly opposed the Appeal and supported the reasons given by the learned Special Judge in rejecting the application for the pre-arrest bail. They submitted that the scythe has been used by the present appellant and therefore that is required to be recovered. There are eye witnesses to the incident who have stated about the use of scythe by the present appellant and therefore, the custody of the appellant is necessary.

5. At the outset it is to be noted that as the caste validity certificate is issued in the name of the father of the appellant and appellant also possesses caste certificate, *prima facie* it can be said that the appellant is belonging to scheduled caste. Even in the FIR also his caste is mentioned, which is scheduled caste. Therefore, the offence under the Atrocities Act cannot be said to be made out against him. Thus, there was no bar for the Special Judge to consider the application for pre-arrest bail. In other words, since there was no bar under Section 18 or 18-A of the Atrocities Act for entertaining the application under Section 438 of the Code of Criminal Procedure by the appellant, the trial Court ought to have considered the other aspects also. First of

all, there appears to be clear delay of six days in lodging the report. Secondly, it is said that the present appellant and one Ranjeet Mane had taken the scythe from accused Dhanesh Jadhav and Chaitanya Shelke and then assaulted the informant on his head. Prior to that Dhanesh Jadhav and Chaitanya Shelke are stated to have assaulted him by scythe at the right side of his head. We have perused the police papers. It shows two injuries, one is extra dural hematoma, 2 mm. right FTP region and it is stated to be grievous. The second injury is to the scalp and size appears to be of 4 x 2 cm. It was on the head but the nature of the injury is stated to be simple. Therefore, whether scythe can cause only simple injury, is a question. No doubt there are statements of eye witnesses on the same line of the FIR, but only for recovery of weapon whether the application could have been rejected, is a question.

6. Now the things stand are that by order dated 28th June 2023 this Court had granted interim relief to the appellant and condition was put to him that he should report before the Investigating Officer on every Monday and Thursday between 10.00 a.m. to 2.00 p.m. till further orders. Learned APP, on instructions, makes a statement that the appellant had remained

present before the Investigating Officer. Under such circumstance, the Investigating Officer had ample opportunity to interrogate the appellant, therefore, there is no necessity of the custody of the appellant. The Appeal, therefore, deserves to be allowed by setting aside the impugned order and the interim relief granted earlier, needs to be confirmed. The attendance granted, as a condition, to continue till filing of the charge-sheet. Hence the following order:-

ORDER

(I) The Appeal stands allowed.

(II) The impugned order dated 26th May 2023 passed by the learned Additional Sessions Judge, Paranda in Criminal Bail Application No.30 of 2023 stands set aside.

(III) The interim protection granted to the appellant by this Court by order dated 28th June 2023 stands confirmed. It is thus clarified that in the event of arrest of the appellant – Sunil S/o Changdeo Magar in connection with Crime No. 132 of 2023 registered with Paranda Police Station, District-Osmanabad for the offence punishable under Sections 307, 323, 504, 506, 341, 143, 147, 148, 149 of the Indian Penal Code and 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Castes and

the Scheduled Tribes (Prevention of Atrocities) Act, he be released on bail on furnishing PR Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each, if already not released.

(IV) The appellant shall not tamper with the evidence of the prosecution in any manner.

(V) Appellant shall remain present before the Investigating Officer on every Monday and Thursday between 10.00 a.m. to 2.00 p.m., till filing of the charge-sheet.

(VI) Fees of the learned Advocate Mr. Quadri, appointed to represent respondent No.2, is quantified at Rs.5000/-.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE