

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

CRIMINAL APPEAL NO.539 OF 2023

Shaikh Ayan Shaikh Anwar,
Age-23 years, Occu:Labour,
R/o-Nai Abadi, Nanded,
District-Nanded.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
In-charge of Shivaji Nagar
Police Station, Nanded,
District-Nanded,
- 2) Aditya Ramesh Ingole,
Age-21 years, Occu:Labour,
R/o-Jaybheem Nagar, Nanded,
District-Nanded.

...RESPONDENTS

...
Mr. M.K. Bhosale Advocate for Appellant.
Mr. S.D. Ghayal, A.P.P. for Respondent No.1 – State.
Mr. V.B. Kale Advocate for Respondent No.2.
...

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

DATE OF RESERVING JUDGMENT : 17th AUGUST 2023

DATE OF PRONOUNCING JUDGMENT : 6th SEPTEMBER 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 (for short "the Atrocities Act") to challenge the order passed below bail application in Crime No.148 of 2023 under Section 439 of the Code of Criminal Procedure, by learned Special Judge under the Atrocities Act / Additional Sessions Judge-1, Nanded on 2nd June 2023. The learned Special Judge has rejected the said application wherein the appellant was seeking bail as he was arrested in connection with the said crime registered with Shivaji Nagar Police Station, District-Nanded for the offence punishable under Sections 307, 323, 504 read with Section 34 of the Indian Penal Code, Section 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act, Section 4 punishable under Section 25 of the Indian Arms Act.

3. Heard learned Advocate Mr. Bhosale appearing for the appellant, learned APP Mr. Ghayal appearing for the State and learned Advocate Mr. Kale appearing for respondent No.2.

4. It has been vehemently submitted on behalf of the appellant that the appellant is an innocent person, who came to be arrested on 15th May 2023 in connection with the said crime. Since the date of his arrest the applicant is behind the bars and there is no incriminating evidence against him. The alleged weapon was discovered by original accused No.4 Shaikh Aziz. Involvement of present appellant was not shown even after filing of the charge-sheet. If we consider the facts of the case, especially the First Information Report (for short "the FIR"), then it can be seen that the present appellant was not known to the informant and not even his caste. Now there is settlement between the appellant and the informant. They have filed application under Section 482 of the Code of Criminal Procedure for quashment of the FIR as well as the entire proceedings. Under the said circumstance the appellant ought to have been released on bail. Original accused No.1 Shaikh Aamer and accused No.4 Shaikh Aziz have been released by the same Court on regular bail on 2nd June 2023 but the application of the present appellant came to be rejected. The charge-sheet is also filed and therefore, the further physical custody of the appellant is not required. The learned trial Judge has not exercised the

discretion judiciously and therefore, the Appeal deserves to be allowed.

5. It will not be out of place to mention here that the informant – respondent No.2 has appeared through Advocate and he has filed the affidavit-in-reply. In the affidavit he has stated that he was discharged from the hospital on 17th May 2023 and thereafter on receiving the notice of the present Appeal, there is an amicable settlement of the dispute in presence of senior members and respected persons from the society, between them. Respondent No.2 states that he has not received any amount of compensation as provided under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, from the Government after he had lodged the FIR. In future also he has no intention to receive any compensation from the Government. He states that he has not received any amount from the accused persons also. His consent for the settlement is with free will. The criminal application for quashment of the FIR i.e. bearing Criminal Application No.2517 of 2023 is filed. There was no previous enmity between them and therefore, he has no intention to prosecute the accused persons further. It is stated that the crime came to be registered

purely due to misunderstanding and out of grave and sudden provocation. Respondent No.2 has no objection for granting bail to the appellant.

6. Learned APP submits that settlement of the dispute amicably cannot be the ground for grant of bail when the offence is under Section 307 of the Indian Penal Code as well as under the Atrocities Act. Now the entire investigation is over and charge-sheet is filed. As per the FIR though it appears that the accused persons were not known to the informant including his caste, yet the facts would make it clear that before the injury was caused, the informant made it known to the accused persons that he is the member of scheduled caste. When the informant and his friend had gone near the Pan shop, they found that the Pan shop was closed. Some persons were standing there and they started abusing the informant. Therefore, informant asked them, as to why they were abusing. Then a person out of them started to assault on the face of the informant. Informant told the accused that he is from Jaibhim Nagar. Thereupon the accused got the knowledge and reiterated that the informant is from Jaibhim Nagar and is from *Jaibhim* (meaning thereby wanted to convey that he is a member of scheduled caste).

Informant was assaulted with kicks and fists. Thereupon other three persons came and out of them one person stated that "Ayan Isko to Khapa de" (अयान इसको तो खपा दे). Thereupon Ayan i.e. present appellant took out *Khanjar* and tried to give blow on the face of the informant, which he resisted by his right hand. It resulted in cutting the veins of the right wrist and it caused injury to the left eye brow. Thereafter the blow of the *Khanjar* was given on the thigh as well as private part of the informant. When the informant's friend tried to intervene, Ayan had told accused Moin, as to why he is just looking and he should assault the friend of the informant. Thereafter those persons assaulted the friend of the informant also. With this FIR, it can be certainly seen that the assault is with the knowledge that the informant is a member of scheduled caste. There are statements of the witnesses and also the supplementary statement of the informant. There is discovery of the *Khanjar* at the behest of the present appellant and therefore, when there is ample evidence against him, appellant does not deserve to be released on bail. The rejection of bail application by the learned trial Judge is absolutely legal and correct.

7. Here, one of the ground which is now pressed into service is the settlement between the informant and the accused. Very

recently in ***Bharwad Santoshbhai Sondabhai vs. State of Gujarat and another (Criminal Appeal No.2495 of 2023 @ Petition for Special Leave to Appeal (Cri.) No.3552 of 2022)***, wherein an accused alleged to have committed offence under Section 302 of the Indian Penal Code, was granted bail on the ground of settlement between the accused and the son of the deceased; the Hon'ble Apex Court expressed surprise and questioned about the appropriateness of allowing personal settlement in serious criminal cases and the implications of granting bail based on such settlement in serious offences. Therefore, in the present case the settlement between the appellant – accused and respondent No.2 cannot be considered at all.

8. Here, the offence against the appellant is under Section 307 of the Indian Penal Code with other Sections of the Indian Penal Code and it is also coupled with the offences under the Atrocities Act as well as the Indian Arms Act. The objects and reasons for enactment of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act were that despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain

vulnerable, they are denied number of civil rights and they were subjected to various offences, indignities, humiliations and harassment. This Act was enacted with the view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. The offence against such members is anti social and therefore, it would be a question as to whether such offence and proceedings can be allowed to be quashed. Of course, the said aspect would be dealt with in the criminal application that has been filed under Section 482 of the Code of Criminal Procedure, but certainly when the said enactment has been enacted with specific object, then after the investigation is over and even the charge-sheet is filed, the point that there is a amicable settlement between the parties cannot be a ground for releasing a particular accused on bail. At this stage, before this Court the offence is still existing and the special case also, as it is not yet quashed and set aside. Under the said circumstance, the application will have to be decided on its own merits.

9. The charge-sheet appears to have been filed on 11th July 2023 and the case is numbered as Special Case (Atrocity) No. 95 of 2023 before the learned Special Judge, Nanded. It is against

four accused and as per the charge-sheet present appellant has been shown as accused No.3. The contents of the FIR are already reproduced and therefore the same are not repeated. It can be seen from the contents that before the informant was allegedly assaulted, he had indicated that he is from a particular area and is belonging to scheduled caste category. Thereupon the accused reacted and present appellant is said to have took out *Khanjar* and assaulted the informant, firstly when he has tried to resist the blow, his right wrist veins got cut and it caused injury to the left eye brow. Thereafter the blows were given on the thigh and private part of the informant. The informant was taken to Government Hospital first and thereafter it appears that he has been shifted to private hospital. The medico legal certificate issued by Yashosai Orthopedic Hospital, Nanded, dated 8th June 2023 states that informant was examined on 15th May 2023 and injury that was found was tendon injury on right forearm with contused lacerated wound over pelvic region and it is said that it is with sharp object. The said blow appears to be with utterance that informant should be killed, as one of the accused had then told the present appellant that appellant should kill the informant (अयान इसको तो खपा दे). There is statement of friend of the informant i.e. Yashwant Babu Thorat which is in

consonance with the FIR. The only thing is that as regards fourth person is concerned, Yashwant says that said person was saying that the informant should be left. The abuses in the name of the caste are stated to be by three accused persons. But friend of the informant has consistently said that the blows were given by the present appellant with *Khanjar*. *Khanjar* is actually a big knife and as per the police papers, the discovery of the same is at the behest of the present appellant under Section 27 of the Indian Evidence Act. Therefore, there appears to be evidence against the present appellant which was considered by the learned trial Judge. The discharge summary from Yashosai Orthopedic Hospital, Nanded has been produced, which shows that the informant was admitted in the hospital between 15th May 2023 to 17th May 2023. It appears from the police papers that by letter dated 8th July 2023 the investigating officer has given a report to his superior for seeking permission to file report under Section 169 of the Code of Criminal Procedure against accused Moin Khan Feroz Khan, for which we are not concerned. Therefore, when there is *prima facie* evidence against the present appellant, this is not a fit case where he should be released on bail.

10. Before we part, we want to place it on record that as per the Government policy some financial assistance scheme by the State Government as well as Central Government is in operation. The compensation is provided to the victims/ informants who are the members of scheduled caste and scheduled tribe, under the said scheme. The rate of compensation is revised from time to time. When it was pointed out to us that there is an amicable settlement between the informant and the accused, we had made inquiry, as to whether present respondent No.2 has received any amount of compensation and as per his affidavit-in-reply as well as the concerned officer from the office of the social welfare department, who was present before this Court, informed that the informant has not applied for getting amount of compensation after the FIR was lodged. In this connection we just want to say that we wanted to get information, as to whether this was one of the case by which an attempt was made to get the compensation amount from the Government. But this appears to be not such a case. But certainly we would further say that in his affidavit-in-reply the informant has not denied the occurrence of the offence. His affidavit was only on the basis of the settlement and he has tried to say that his FIR was the outcome of misunderstanding. We do not want to make further

comment as to when he realized the mistake or the misunderstanding, as we have come to the conclusion that as on today there is *prima facie* evidence against the present appellant and taking into consideration the seriousness of the offence, this is not a fit case for releasing the appellant on bail. We do not find any illegality or error committed by the learned trial Judge in rejecting the application and the Appeal deserves to be dismissed.

11. The Appeal, therefore, stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE