

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

CRIMINAL APPEAL NO.599 OF 2023

Suresh Panditrao Kadam,
Age-42 years, Occupation-Agriculture,
R/o-Deomurti, Tq. & Dist-Jalna

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Through In Charge Officer,
Police Station, Taluka-Jalna,
Dist-Jalna,
- 2) Nilesh Raju Bharadwaj,
Age-24 years, Occupation-Driver,
R/o-Ramabai Nagar, Near Railway
Station, Jalna, Tq. & Dist-Jalna,
Mob. No. 8698729453

...RESPONDENTS

...
Mr. S.J. Salunke Advocate for Appellant.
Mr. A.M. Phule, A.P.P. for Respondent No.1.
Mr. Kedar Warad Advocate appointed for Respondent No.2.
...

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

DATE : 31st JULY, 2023

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

1. 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 rejection of bail application i.e. Criminal Misc. Application (Bail) No.704 of 2023 by the learned Special Judge under the Atrocities Act / Additional Sessions Judge, Jalna, dated 28th June 2023 thereby rejecting the bail application under Section 439 of the Code of Criminal Procedure filed by the present appellant. Present appellant is one of the accused in Crime No.183 of 2023 registered with Taluka Jalna Police Station, Jalna for the offence punishable under Sections 143, 147, 148, 149, 307, 323, 504 of the Indian Penal Code and Sections 4(1), 3(1)(r), 3(1)(s) of the Atrocities Act. The said crime came to be registered on the basis of the First Information Report (for short "the FIR") lodged by present respondent No.2.

2. Admit.

3. Heard Learned Advocate Mr. Salunke appearing for the appellant, learned APP Mr. Phule appearing for State and learned Advocate Mr. Warad, appointed to represent respondent No.2.

4. Perusal of the FIR lodged by present respondent No.2 would disclose that respondent No.2 is a member of scheduled caste. Around 10.00 p.m. on 26th March 2023, he along with his

friends had gone to Vasu Hotel near Jalna Bypass. 7 to 8 persons were taking dinner on the table which was besides the table occupied by the informant and his friends. Some dispute arose between the persons sitting on the next table. According to the informant, Krishna Kadam, Suresh Kadam, Bali Kadam, Pandit Shinde, Mahendra Kadam, Ravi Kadam and Shekhar Jadhav were holding sword and rod. They suddenly started assaulting the informant and his friend Deva Gaikwad. They saw the *Ashok Chakra* and photo of Lord *Gautam Buddha* in the neck-less of the informant and after seeing the said photograph, they started abusing the informant in the name of the caste. Accused Krushna Kadam, with an intention to kill Deva, gave blow of sword on his head and caused grievous injuries. Informant received injuries of sword and rod by other accused persons. He sustained injuries to his head and left hand finger.

5. Learned Advocate for the appellant submits that the learned trial Judge failed to consider that now the investigation is over and charge-sheet is also filed, therefore, the further physical custody of the appellant is not required. The appellant is ready to abide by the terms of the bail.

6. The learned APP as well as learned Advocate appointed to

represent the cause of respondent No.2, objected the Appeal and submitted that the entire charge-sheet would show active participation by the appellant. Releasing appellant would cause prejudice to the informant and would be dangerous to his life.

7. Important point to be noted is that the present appellant has been posed as accused No.1. Accused Ravi, Mahendra and Baliram appears to have been released by this Court and Special Judge, either by way of ad interim protection or by final order under Section 438 of the Code of Criminal Procedure. Now perusal of the FIR would show that there was no intention to directly cause any harm to the informant and his friend. The FIR itself would show that the dispute started amongst accused persons themselves and then suddenly it is said that the accused persons started assaulting the informant and his friend. It is stated that the weapons like sword and rod have been used but in spite of the fact that the present appellant was in the custody of the investigating officer, there is no recovery. There was no question of bar under Section 18 or 18-A of the Atrocities Act when the bail application was under Section 439 of the Code of Criminal Procedure. There appears to be statements of witnesses including the other injured. The other injured in his statement

under Section 161 of the Code of Criminal Procedure rather says that they were not even knowing the assailants. The physical custody of the appellant is now definitely not required. Even the house search of the accused have been taken by the investigating officer. The medical certificate of Deva Gaikwad would show that he has suffered contused lacerated wound over parietal region and the nature of the injury is stated to be simple. The medical certificate of the informant also shows that he has suffered contused lacerated wound over left temporal region and it is stated to be simple and Amit Kamble has also received similar injury to parietal region and it is also stated to be simple. One Vitthal Jadhav stated to be suffered contused lacerated wound over left parietal region which is simple and another is blunt trauma to the right wrist and X-ray shows that there was fracture and it is stated to be grievous. However, it is to be stated that said Vitthal Jadhav is not the friend of the informant but he is the person who had also allegedly come for the dinner with some other persons. Thus the situation stands is, as per the FIR in all seven accused alleged to have assaulted the informant and his friend with sword and iron rod. How many of them have used sword and how many of them have used rod is not clear, yet the informant and his friend have received only one

injury, that too simple in nature. Taking into consideration this aspect, the learned Special Judge ought to have granted the application under Section 439 of the Code of Criminal Procedure.

8. Before parting, once again we are required to observe that the impugned order is as cryptic as it is. The learned Special Judge, who decided the Criminal Misc. Application (Bail) No.704 of 2023 has not even written his proper designation under the Special Enactment and it is observed that the said Court had already rejected the bail application which was before the charge-sheet and therefore that has been taken to be one of the ground to reject the bail application. Now it is high time to say that the learned Sessions Judges, learned Additional Sessions Judges, learned Special Judges under the Special Enactment, are writing the orders as cryptic as those are, in respect of bail applications and it appears that it is with the sole view to reject the bail application. This attitude is absolutely not proper. The facts will have to be analyzed properly and not with the sole view / intention to reject the application. Hope and trust that some seriousness would be shown by the concerned Courts / Judges.

9. Before concluding, as has been pointed out by the learned Advocate appointed for respondent No.2 that it appears that accused Ravi Panditrao Kadam was ordered to be released under the orders of this Court passed at the interim stage i.e. in Criminal Appeal No.422 of 2023. He came to be arrested by the investigating officer and was released on PR Bond of Rs.50,000/- and with one surety. One Suresh Eknathrao Autade stood him as surety. We are unable to get as to who had quantified the bond amount and further it appears from the charge-sheet that though 7 X 12 extract has been taken in respect of Suresh Autade, there is no solvency certificate. We would like to rely upon Para 15 of Chapter I of the Criminal Manual, which says that if the amount of surety is above Rs.25,000/- but not exceeding Rs.1,00,000/- then the appropriate authority to issue solvency certificate is Tahsildar. No solvency certificate of Tahsildar appears to have been produced before the investigating officer by Suresh Autade. Therefore, we want to know, as to which procedure the Police Department is following when the Courts are granting order under Section 438 (may be interim or may be final) of the Code of Criminal Procedure. In other words, when such orders are passed and in the event of arrest the question arises of releasing the said accused on bail, then which

documents Police Authorities are collecting and whether they are following the Criminal Manual or not, is required to be gone into. If there is no procedure laid down, then some guidelines are required to be given in that respect. Therefore, though we are allowing the Appeal, yet for the further directions the Appeal would proceed. Hence following order:-

ORDER

(I) The Appeal stands allowed.

(II) The order passed by the learned Special Judge under the Atrocities Act and Additional Sessions Judge, Jalna in Criminal Misc. Application (Bail) No. 704 of 2023, dated 28th June 2023 stands set aside. The said application stands allowed.

(III) The appellant – Suresh Panditrao Kadam, who has been arrested in connection with Crime No.183 of 2023 registered with Taluka Jalna Police Station, Jalna, District-Jalna, for the offence punishable under Sections 143, 147, 148, 149, 307, 323, 504 of the Indian Penal Code and Sections 4(1), 3(1)(r), 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, be released on bail on PB and SB of Rs.50,000/-.

(IV) Appellant shall remain present before the Investigating Officer as and when called and co-operate with the investigation.

(V) Appellant shall not tamper with the evidence of the prosecution in any manner.

(VI) Appellant shall not indulge in any criminal activity.

(VII) Bail before the Trial Court.

(VIII) Fees of the learned Advocate Mr. Kedar Warad, who is appointed to represent the cause of respondent No.2 is quantified at Rs.5000/-.

(IX) Learned APP to get instructions as to what procedure is adopted by the Police Department, in view of the observations made in Paragraph No.9 of the order. An affidavit of a responsible higher rank official be filed on or before 17th August 2023.

(X) Place the matter for further consideration on 19th August 2023.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG23