

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

CRIMINAL APPEAL NO.616 OF 2023

- 1) Durgesh s/o Rameshwar Dhole,
Age-25 years, Occu:Agriculture,
- 2) Ravi s/o Rameshwar Dhole,
Age-25 years, Occu:Agriculture,
- 3) Gopinath s/o Padurang Dhole,
Age-27 years, Occu:Agriculture,
- 4) Akash s/o Janardhan Dandait,
Age-28 years, Occu:Agriculture,
- 5) Rameshwar s/o Nanabhau Kadam,
Age-23 years, Occu:Agriculture,
- 6) Ganesh s/o Babasaheb Dhawle,
Age-30 years, Occu:Agriculture,
- 7) Vilas s/o Uttam Dhande,
Age-26 years, Occu:Agriculture,

All above R/o-Jalgaon Brahmankheda,
Tq. & Dist-Jalna.

**(Appeal as against Appellant No.1,
Appellant Nos.3 to 7 stands disposed of
as withdrawn vide order dated
19th July 2023)**

...APPELLANTS

VERSUS

- 1) The State of Maharashtra,
Through Investigation Officer,
Maujpuri Police Station,
Dist-Jalna,

2) Dnyaneshwar Rajebhau Kadam,
Age-40 years, Occu:Labour,
R/o-Jalgaon, Zopadpatti,
Tq. & Dist-Jalna.

...RESPONDENTS

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Mr. P.P. More Advocate for Appellant No.2.
Appeal as against Appellant No.1, Appellant Nos.3 to 7
stands disposed of as withdrawn vide order dated 19th
July 2023.

Mr. A.M. Phule, A.P.P. for Respondent No.1 – State.
Mr. Sunil G. Magre Advocate for Respondent No.2.

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

DATE : 1st AUGUST, 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 Criminal Bail Application No.696 of 2023 filed by the appellants before the learned Special Judge under the Atrocities Act / the Additional Sessions Judge, Jalna, which came to be rejected on 3rd July 2023. The said application was filed under Section 438 of the Code of Criminal Procedure. The appellants were apprehending their arrest in connection with Crime No. 190

of 2023 registered with Maujpuri Police Station, District-Jalna for the offence punishable under Sections 143, 147, 148, 149, 307, 326 and 324 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(1)(u) of the Atrocities Act.

2. It will not be out of place to mention here that as against appellant Nos.1 and 3 to 7 when the matter was on Board on 19th July 2023, when disinclination was shown, the learned Advocate appearing for those appellants sought withdrawal of the Appeal as against those appellants and accordingly, Appeal as against appellant Nos.1 and 3 to 7 came to be disposed of as withdrawn and the Appeal was decided to be proceeded in respect of appellant No.2 – Ravi Rameshwar Dhole only.

3. Heard learned Advocate Mr. More appearing for appellant No.2, learned APP Mr. Phule appearing for respondent No.1 – State and learned Advocate Mr. Magre appearing for respondent No.2.

4. The impugned First Information Report (for short “the FIR”) has been filed by present respondent No.2 on 17th June 2023 in respect of alleged incident dated 16th June 2023. Informant has stated that as he was not having any work on the

day of incident, he was at his home. There was trifle dispute between his younger brother Ram Kadam with Durgesh Dhole i.e. original accused No.1. Durgesh Dhole is the grocery shop owner at Jalgaon T Point at Jalna. According to the informant the said dispute was settled and thereafter at around 4.00 p.m. the informant had gone for purchase of grocery articles from the shop of one Lahane, which was by the side of the grocery shop of original accused No.1. It is said that all the accused persons were present at the said place including present appellant No.2, who has been stated to be accused No.2 in the FIR. It is said that accused Durgesh Dhole came out of the shop and addressed the informant. Accused Durgesh abused the informant in the name of the caste and therefore informant asked him as to why he was giving abuses in the name of caste. At that time Durgesh again abused him. Informant then says that Durgesh and others who were present there, attacked him with an intention to kill him. Durgesh and Gopinath assaulted the informant by iron rod and caused injury to the leg. Accused Vilas Dhande and Rama Kadam assaulted informant on the left leg. Accused Raju, Akash and Ganesh assaulted the informant by rod on his left arm, right arm, left ribs. As a result of those injuries, informant fell down and became unconscious. Informant regained his consciousness

in the Civil Hospital, Jalna. Thus, it is to be noted that in the FIR, no specific role has been attributed to appellant No.2.

5. Respondent No.2 has filed written objection in the form of affidavit-in-reply. It has been stated that appellant No.2 was the member of unlawful assembly. He had not taken any efforts to protect the life of the informant by restraining the other co-accused. The attack has resulted in fracture to both legs of the informant and he is bed-ridden.

6. Perusal of the said affidavit-in-reply would also show that no specific role has been attributed to appellant No.2. His activity as alleged member of unlawful assembly does not appear to be active. Nothing is required to be recovered from appellant No.2. When active role is not attributed, it cannot be said that the ingredients of the offence under the Atrocities Act are clearly made out against appellant No.2. All these facts were not seen by the learned trial Judge and therefore, interference is required. Appellant No.2, therefore deserves to be protected and the interim protection granted to him deserves to be confirmed. Hence, following order:

ORDER

(I) Appeal stands allowed, partly.

(II) The impugned order dated 3rd July 2023 passed by the learned Additional Sessions Judge, Jalna in Criminal Bail Application No.696 of 2023 stands set aside, so far as present appellant No.2 is concerned.

(III) The interim protection granted to appellant No.2 by this Court by order dated 19th July 2023 stands confirmed. It is thus clarified that in the event of arrest of appellant No.2 – Ravi s/o Rameshwar Dhole in connection with Crime No.190 of 2023 registered with Police Station, Maujpuri, District-Jalna, for the offence punishable under Sections 143, 147, 148, 149, 307, 326 and 324 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s) and 3(1)(u) of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, he be released on bail on P.R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each, if already not released.

(III) Appellant shall not indulge in any criminal activity nor he shall tamper with the evidence of the prosecution, in any manner.

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

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG23