

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

CRIMINAL APPEAL NO.781 OF 2023

BALAJI BHUJANGRAO MUNGAL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. S. R. Bagal, Advocate for the appellant
Mr. G. O. Wattamwar, APP for the respondent/State
Mr. S. G. Magre, Advocate for respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 20th SEPTEMBER, 2023

P.C. :-

1. Mr. Magre, learned counsel states that he has filed vakalatnama on behalf of respondent No.2. It is taken on record.
2. This appeal is filed under Section 439 of Criminal Procedure Code seeking bail in connection with Crime No. 392/2023 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 143, 147, 148, 149, 302, 307, 324, 323, 294, 504 of Indian Penal Code (for short 'IPC'), under Sections 3(1)(r), 3(1)(s), 3(2) (va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Act') and under Sections 4/25, 4/27 of Arms Act.
3. First information report shows that Aakash, the informant along with his brother Akshay went to the shop. At that time there was a

marriage procession of one of the member of *Maratha* community. It is alleged in the first information report that at around 7.30 p.m. after having seen informant and his brother, co-accused Santosh Tidke abused them over their caste and said that they are to be killed. It is also commented how Bhimjayanti procession was taken by them in the village. There are specific allegations made against said co-accused the he had assaulted his brother with stick, kicks and fist blows. There is also allegation against another co-accused about causing injury on the abdomen of his brother with dagger. When the informant tried to save his brother, it is alleged that present appellant and others instigated them for killing him too. There is allegation that the appellant assaulted him with kick and fist blows. It is alleged that co-accused Datta assaulted him with dagger on his left arm and therefore he sustained injury. There is further allegation that the accused person assaulted his mother. In the said incident informant's brother died and informant and his mother sustained injuries.

4. Learned counsel for the appellant submits that there is no allegation against the present appellant about he using any weapon and causing any injury to the informant or deceased. It is submitted that in the first information report the allegation is with regard to the fist blows given by the appellant to the informant. There is no allegation that appellant even gave any fist blow to the deceased. It is submitted that

the investigation in to the crime is already over and charge-sheet has been filed. Attention of the Court is drawn to the post mortem notes which indicate that there is one stab injury and two abrasions over the deceased person and informant sustained one simple injury. As far as the mother of the informant is concerned, it is argued that she also sustained two simple injuries on her right knee and right great toe (foot). It is his further submission that except for the statement of the informant other witnesses are not eye witnesses to the actual incident of assault as the mother of the informant also appears to have reached to the spot after the after the first incident of assaulting informant and his brother was over. In this regard statement of the shopkeeper is referred in order to submit that he does not make any statement with regard to all persons who have joined the marriage procession were carrying weapons in their arms. The offence punishable under Section 302 of the IPC cannot be made applicable to the present appellant.

5. Learned APP opposed the appeal by submitting that claim of informant is duly supported by statements of other witnesses. It is his submission that there was prohibition order issued by the Competent Authority and in spite of the same the weapons were carried in the procession and which were used to kill the deceased and to cause injury to the informant. As far as the present appellant is concerned, it is submitted that though there is no allegation against him about causing

actual assault on the deceased or informant with any weapon however, he has instigated the co-accused to assault him. According to him Sections 147, 148 and 149 of IPC are made applicable to the present case, the appellant is also responsible for the acts of co-accused.

6. Learned counsel for the informant submitted that apart from the incident in question there are disputes between two communities in the village and the same cannot be ignored, while deciding bail application. It is his submission that even after the occurrence of the incident the informant though was given police protection, he was assaulted by relatives of appellant. He drew attention of the Court to the complaints lodged by the informant and his parents against the relatives of the accused person about the atrocities caused by them including threats issued for compromising the criminal case. It is his submission that the complaint lodged by them clearly indicate that it is case of social boycott and if any such incident occurs when appellant is behind bar, he fears serious consequences if he released on bail. Attention of the Court is also drawn to the observations made by the learned Addl. Sessions Judge while rejecting the bail application.

7. The first information report shows that the incident in question was not premeditated and at the instance of the co-accused the incident in question started. Pertinently there is no allegation made in the first

information report with regard to any alleged instigation at the instance of present appellant or his actual involvement in the assault on deceased. It is alleged that appellant along with two other persons have abused the informant over his caste and have instigated co-accused to kill him. Though such allegation is there, at this stage it is difficult to accept that all three persons in chorus have hurled such abuses and threat. With regard to the actual incident of assault on the informant is concerned, there is no allegation against the appellant that he used any weapon in order to cause the said assault. The allegation against him is of beating him with fist and kick blows. The injury certificate of the informant does not show any other injury except for the incised wound which is attributable to the co-accused and not to the present appellant. There is nothing on record to indicate that the informant received any beating at the hands of present appellant.

8. As far as the contention of the learned APP and learned counsel for the informant that against the prohibitory order dagger and sword were carried out in the marriage procession is concerned, there is no allegation that the present appellant was holding any weapon in order to make said allegations applicable to him. Though Sections 147, 148 and 149 of IPC are sought to be made applicable to the present appellant but pertinently there is no role at all shown by informant himself in the assault caused on the brother of the informant. As recorded earlier it is

the incident was not premeditated. Spontaneity of the incident is not ruled out. As far as the carrying weapon like sword and dagger in the marriage procession is concerned, the photograph placed on record by the learned counsel for the informant shows that the bridegroom is seen holding the sword in his hand and someone else displaying dagger. Rightly or wrongly there is practice followed of carrying such weapons in the procession which is known fact. Therefore, it cannot be held at this stage that the weapons were carried in order to cause assault on someone. *Prima facie* breach of prohibiting order, in present case is not sufficient to attach premeditation to use these weapon or common object being stood by all accused cannot be inferred.

9. As far as the complaints lodged by the informant and his family members against to the authority after the occurrence of the incident is concerned, the said complaints are general in nature. No specific instances are mentioned therein. This Court has made specific query to the learned counsel for the informant as to whether there is any specific avernment against the appellant's relatives in particular of causing such incident. To which it was replied that there are only two communities in the village and they are all relatives of each other. This allegation is general in nature and cannot be made attributable to the appellant herein.

10. In aforesaid circumstances this is a fit case for grant of bail. Hence the following order.

ORDER

(i) Appeal is allowed.

(ii) The appellant be released on bail in connection with Crime No. 392/2023, registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 143, 147, 148, 149, 302, 307, 324, 323, 294, 504 of IPC, under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and under Sections 4/25, 4/27 of Arms Act, on furnishing PB and SB of Rs.30,000/- (Rupees Fifteen Thousand only) with one or two sureties in the like amount.

(iii) He shall attend the concerned police station once in a month for period of six months from today.

(iv) He shall not contact the witnesses directly or indirectly.

(v) He shall not interfere with the evidence in any manner whatsoever.

(vi) Bail before Trial Court.

(R. M. JOSHI, J.)

ssp