

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

**CRIMINAL APPEAL NO.905 OF 2022**

Pradeep Kashinath Balapure  
Age: 24 years, Occu.: Education/Agri.  
R/o. Manjram, Tq. Naigaon, Dist. Nanded .. **Appellant**

***Versus***

1. The State of Maharashtra  
Through P.I., Police Station, Naigaon,  
Tq. Naigaon (b), Dist. Nanded.
2. Gajanan Venkatrao Perke  
Age: 24 years, Occu.: Agri.  
R/o. Manjram, Tq. Naigaon,  
Dist. Nanded .. **Respondents**

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Mr. Santosh S. Patil, Advocate for appellant.  
Mr. R. V. Dasalkar, APP for respondent No.1 - State.  
Mr. N. N. Bhagwat, Advocate for respondent No.2 (Appointed)

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

**DATE : January 25, 2023.**

**JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]**

. **Admit.**

2. Present appeal has been filed by the appellant under Section 14-A(2) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act")

challenging the rejection of his bail application under Section 439 of the Code of Criminal Procedure by learned Special Judge, under Atrocities Act, Biloli, Dist. Nanded on 15.11.2022.

3. Respondent No.2 is the original informant, who has lodged the FIR vide Crime No.131 of 2022 with Naigaon Police Station, Dist. Nanded for the offences punishable under Sections 326, 452, 324, 323, 504, 506, 143, 147, 148 of the Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act. The present appellant has been arrayed as accused No.1. He had filed application under Section 439 of the Code of Criminal Procedure on 17.10.2022 and as aforesaid, it has been rejected on 15.11.2022. It will not be out of place to mention here that after the present appeal has been filed, charge-sheet is also filed before the learned Special Judge on 08.12.2022.

4. Heard learned Advocate Mr. Santosh S. Patil for the appellant, learned APP Mr. R. V. Dasalkar for respondent No.1 - State and learned Advocate Mr. N. N. Bhagwat for respondent No.2 (Appointed).

5. It has been vehemently submitted on behalf of the appellant that the learned Special Judge has given a cryptic order and had not considered all the aspects involved. Now, the investigation is

complete and charge-sheet is also filed, therefore, the further physical custody of the appellant is not required. Perusal of the contents of the FIR would show that there was previous quarrel between the family of the informant and one Vishwanath Balapure, but the informant is addressing it as a trifle quarrel and then he says that due to the intervention of respectable persons from the village, the said dispute was resolved. Further, it appears from the contents of the FIR that supply of drinking water order was given to said Vishwanath Balapure in a function that was organized at the house of uncle of the informant on 02.09.2022. If there would have been any hint in the mind of the informant and his family members regarding the caste of the appellant, such contract would not have been given. Then it is stated that around 10.00 a.m. on 03.09.2022, informant had come to his maternal uncle's place for lunch, at that time, all the accused were present and it is stated that they were armed with axe, sticks, chilly powder. Then, he says that all of them started abusing the informant in the name of caste and asked him as to where maternal uncle is. They gave threat to kill them. When informant asked him as to why they are behaving so, then it is stated that accused Sandip gave him slaps. As regards the appellant is concerned, it is then stated that he had assaulted the maternal uncle Devidas with the help of handle of the axe causing him serious injury

to his head. He also assigned role to the other accused persons. Now, if we consider the charge-sheet, then it does not reflect that there is serious injury to the head of maternal uncle. The Medico Legal Certificate shows that Devidas suffered five injuries and all of them are simple in nature. The informant is stated to have received grievous injury to his right wrist, but it is not caused by the appellant. When the investigation is complete, the appellant deserves to be released on bail. All these documents ought to have been considered by the learned Special Judge.

6. Per contra, the learned APP and learned Advocate appointed for respondent No.2 has strongly opposed the appeal. Learned Advocate for respondent No.2 has also produced the application given by one Sadashiv Alewad, who had lodged offence under the Atrocities Act against the appellant and others on 03.09.2022, to P.S.I., Police Station, Naigaon, however, they were not arrested till 11.10.2022. Sadashiv appears to be the brother of Devidas, who is the maternal uncle of informant and he was referring to the present FIR itself. The said complaint application was given on 11.10.2022, but it appears that the appellant came to be arrested on the same day i.e. 11.10.2022. Further documents on which he wants to rely are certain medical papers, but perusal of those documents would show that they are in respect of tortuous venous vericosities on the leg region.

He wants to tag some medical papers, which are of the earlier date in respect of treatment at Deccan Joint Replacement and Orthopedic Trauma Centre, Nanded dated 03.08.2022. The said centre itself has given discharge summary of about the admission of Devidas between 03.09.2022, 11.30 p.m. to 05.09.2022, 5.30 p.m. However, it does not show grievous injury to the head. Relying upon these documents, the learned Advocate for respondent No.2 submits that no case is made out for exercising discretionary powers. The learned Special Judge was correct in not using the said discretion.

7. Learned Advocate for respondent No.2 has also relied on ***Bachu Das Vs. State of Bihar, [AIR 2014 (SC) (Supp.) 1317]***, wherein it has been held that "a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been *prima facie* made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail"

8. At this stage itself, we would like to say that the decision in ***Bachu Das (Supra)*** is not helpful to respondent No.2 to raise objection for the simple reason that the application which was filed by the appellant before the learned Special Judge was under Section

439 of the Code of Criminal Procedure and not under Section 438 of the Code of Criminal Procedure.

9. When the application under Section 439 of the Code of Criminal Procedure was filed by the present appellant before the learned Special Judge, till its decision the charge-sheet was not filed, however, the learned Special Judge was not estopped from considering the police papers. Definitely, a cryptic order has been passed in which it is only stated that he has perused the copy of the FIR. There is absolutely no reference that he has perused the police papers. Further, it does not reflect as to whether there was compliance of Section 15A(3) and (5) of the Atrocities Act. Section 15A(3) of the Atrocities Act contemplates issuing notice or through prosecution, it has to be caused that the information about filing of the bail application by the accused should be made known to the victim or the informant and then Section 15A(5) contemplates mandatory hearing to be given to such victim or informant when he or she causes appearance. The order in bail application by any Special Judge under the Atrocities Act should reflect whether the mandatory provisions have been complied with or not. Therefore, law does not contemplate cryptic orders while dealing with even the bail application.

10. Now, the investigation is over and charge-sheet is also filed. From the record, it can be seen that in order to support the contents of the FIR, there are statements of witnesses under Section 161 of the Code of Criminal Procedure. Statement of the injured Devidas has also been recorded. All these documents would show that as regards the appellant is concerned, it is stated that he has assaulted Devidas with the handle of the axe on his head. The axe has been recovered under Section 27 of the Indian Evidence Act. If we consider his Medico Legal Certificate issued by Medical Officer, P.H.C. Manjaram, Tq. Naigaon, Dist. Nanded, it shows five injuries. First is CLW over left frontal bony surface and it is stated that it is simple in nature, the other two injuries are abrasion and other two are contusions and none of them are on head. As aforesaid, even the hospital, where he was admitted, appears to have not certified that he has suffered grievous injury to his head and secondly, Devidas has not produced that certificate before the Investigating Officer. Statement of Devidas has been recorded on 17.09.2022 and it is totally silent that he was admitted in Deccan Joint Replacement and Orthopedic Trauma Centre, Nanded. As regards the abuses in the name of caste are concerned, the contents of the FIR and the statements of witnesses under Section 161 of the Code of Criminal Procedure states that they were uttered in chorus. Some of the accused in the said chorus have

been released on bail by this Court. Even anticipatory bail has been granted. Under such circumstance, all these factors ought to have been considered by the learned Special Judge.

11. We reiterate that it is absolutely not expected by law that the learned Special Judge dealing with bail applications or any other Court dealing with bail applications should pass cryptic orders. Proper reasons will have to be assigned for either granting or rejecting the application. We are, therefore, of the opinion that the appeal deserves to be allowed. Hence, the following order :-

### **ORDER**

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge, under the Atrocities Act, Biloli, in Criminal Bail Application No.163 of 2022 on 15.11.2022 stands set aside. The said application stands allowed.
- iii) Appellant - Pradeep Kashinath Balapure, who has been arrested in connection with Crime No.131 of 2022 registered with Naigaon Police Station, Dist. Nanded for the offences punishable under Sections 326, 452, 324, 323, 504, 506, 143, 147, 148 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act, be released on P.R. Bond of Rs.30,000/- with two solvent sureties of

Rs.15,000/- each.

iv) He shall not tamper with the evidence of the prosecution in any manner.

v) He shall not indulge in any criminal activity.

vi) Bail before the Trial Court.

vii) Fees of learned Advocate, who is appointed for respondent No.2, is quantified at Rs.5,000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

**[ ABHAY S. WAGHWASE ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

scm