

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.942 OF 2022

Guddu s/o Sattar Sayyad
Age: 37 years, Occu.: Business,
R/o. Shahada, Tq. Shahada,
Dist. Nandurbar.

.. Appellant

Versus

1. The State of Maharashtra
2. The Superintendent of Police,
Nandurbar.
3. Nana s/o Haru Sonawane,
Age: 20 years, Occu.: Labour,
R/o. Samta Nagar, Maloni,
Tq. Shahada, Dist. Nandurbar

.. Respondents

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Mr. A. R. Syed h/f Mrs. S. T. Kazi, Advocate for appellant.
Mr. R. V. Dasalkar, APP for respondent Nos.1 and 2 - State.
Mrs. L. R. Thakur, Advocate for respondent No.3 (Appointed).

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

DATE : February 22, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

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

challenge the order passed by learned Special Judge, under the Atrocities Act, Shahada, Dist. Nandurbar, rejecting the bail application under Section 438 of the Code of Criminal Procedure of the appellant on 16.11.2022, which was in fact filed at Exhibit-19 in Sessions Case No.16 of 2020.

2. It will not be out of place to mention here that the present appellant had earlier approached this Court by filing Criminal Appeal No.108 of 2020 to challenge the order then passed by the learned Special Judge, however, at that time, Section 326 of Indian Penal Code was not added and, therefore, the matter was before the learned Single Judge of this Court (Coram : Smt. Vibha Kankanwadi, J.). The interim protection was granted to the appellant by order dated 31.01.2020, however, the said appeal was withdrawn on 20.06.2022 after the disinclination was shown by this Court. It appears that thereafter again by filing application Exhibit-19, the present appellant had approached the same Court for anticipatory bail and the said application is also rejected. Hence, this appeal.

3. Heard learned Advocate Mr. A. R. Syed holding for learned Advocate Mrs. S. T. Kazi for the appellant, learned APP Mr. R. V. Dasalkar for respondent Nos.1 and 2 - State and learned Advocate Mrs. L. R. Thakur for respondent No.3.

4. It has been specifically mentioned in the impugned order that this Court while granting interim protection had directed the appellant - accused to attend the concerned police station on every Wednesday between 10.00 a.m. to 1.00 p.m. till further orders, but later on after the disinclination was shown, the appeal was withdrawn and, therefore, the learned Special Judge made enquiry to the learned Advocate appearing for the appellant as to what was the reason for withdrawal of the appeal. He replied that the appellant had not attended the concerned police station as per the condition to the bail that was granted at the interim stage by this Court. That appears to be the main reason why the application was rejected and it is specifically mentioned that the person who has not obeyed the order passed by the High Court is not entitled to the relief of the anticipatory bail. In fact, the interim protection was granted with condition and it was expected from the appellant to attend the police station. Such conditions are imposed so that the investigation is not hampered, but the appellant has not attended the police station. Orally it was submitted on behalf of the appellant that the appellant was required to go to his relative's place because of the sudden death of his relative and, therefore, he could not attend the police station, however, in order to support the said statement, though orally made at the time of submissions, no documentary evidence has been

produced in the form of death extract of his relative. Further, this Court had granted the interim protection on 31.01.2020 and the withdrawal of the appeal was on 20.06.2022. That means for more than two years he was enjoying the protection. No doubt, some time would have been consumed due to lock-down, but still there are slots in which he could have attended the police station. The investigations did not halt due to the lock-down. They went on and, therefore, there was no reasonable ground to the appellant for not attending the police station. In other words, there was breach of terms of condition to the bail at the interim protection stage itself. Under such circumstance, the discretionary relief could not have been granted by the learned Special Judge. There is no error committed by the learned Trial Judge.

5. Now, turning towards the merit that was tried to be submitted the investigation is over and charge-sheet is also filed. It came to be filed on 20.05.2020 and, at that time, it is stated that interim protection has been granted to the appellant, however, final decision on his appeal is yet to come. In the FIR lodged by present respondent No.3, it has been stated that the present appellant had assaulted one Budha Daka Sonawane with tommy. He has been referred by Budha Daka Sonawane in his statement under Section 161 of the Code of Criminal Procedure as Guddu Sattar Sayyad Garagewala. It appears

that the present appellant runs a garage and, therefore, tommy is necessarily available with him. Definitely that weapon is yet to be recovered in the matter. The medico legal opinion of Budha Sonawane would show that there was contusion of back and forehead and both the injuries were simple in nature. Therefore, it may attract Section 324 of Indian Penal Code. Statement of Budha Daka Sonawane has also been recorded under Section 164 of the Code of Criminal Procedure, which is consistent about the appellant's role and assault by tommy. There are statements of witnesses also supporting the same. Informant Nana Haru Sonawane is a member of Scheduled Tribe. He is the cousin brother of Budha Sonawane. Thereby, *prima facie*, it can be said that even Budha Sonawane, who received injuries with tommy, is a member of Scheduled Tribe. Therefore, *prima facie*, offence under Section 3(2)(va) of the Atrocities Act is attracted against the present appellant, though it is not stated that he had abused either informant or Budha Sonawane in the name of caste or tribe. Therefore, on merits also, the application under Section 438 of the Code of Criminal Procedure was barred under Section 18 and 18-A of the Atrocities Act. The learned Special Judge was justified in rejecting the application. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is dismissed.

6. Fees of learned Advocate, who is appointed to represent the cause of respondent No.3, 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