

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 991 OF 2022

Shrikrushna S/o Sukhdeo Gandhare  
Age : 26 Years, Occu. Labour,  
R/o. Khandoba Maidan, Samitra Colony,  
Majalgaon, Tq. Majalgaon,  
Dist. Beed.

**... Appellant.**  
(Orig.Accused No.4 in FIR)

**Versus**

1. The State of Maharashtra,  
Through Police Station Officer,  
Police Station Majalgaon (Rural),  
Tq. Majalgaon, Dist. Beed.
2. Karan S/o. Ganesh Jadhav,  
Age : 22 Years, Occu. Education,  
R/o. Talkhed, Tq. Majalgaon,  
Dist. Beed.

**... Respondent**  
(Resp. No.2 – Orig.informant)

...

Mr. B. R. Sable, Advocate for Appellant.  
Mr. A. M. Phule, APP for Respondent No.1 – State.  
Mr. P N. Muley, Advocate for Respondent No.2.

...

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

**DATE : 13<sup>th</sup> FEBRUARY 2023.**

**ORDER (PER ABHAY S. WAGHWASE, J.) :**

1. **Admit.**

2. Original accused No.4, who along with co-accused was booked for commission of offence under sections 307, 143, 147, 148, 149, 323, 504, 506 of Indian Penal Code and under sections 25(3), 27 of Arms Act and under Sections 4(1)(i)(s), 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, has preferred present appeal challenging the rejection of his bail application under section 439 of Cr.P.C. by the learned Additional Sessions Judge, Majalgaon on 12.10.2022. The crime is registered at the instance of respondent No.2 herein, bearing C.R. No. 124 of 2022 dated 31.05.2022 registered at Majalgaon Rural Police Station, District Beed.

3. It is submitted that FIR bearing No. 124 of 2022 came to be registered alleging that on 30.05.2022, around 5.30 p.m., accused persons got annoyed as their way for vehicle was blocked by some labourers who were dancing on the road. Some quarrel ensued between persons in the Scorpio vehicle and such labourers and there were abuses on both sides. It is alleged that after verbal exchange of words, accused namely, Santosh Gaikwad slapped one of the labour. Later on, 50 to 60 labourers gathered there. That, one of the labour, namely, Dinesh More and Ankush Raswe questioned to Dilip for slapping, it is alleged that Dilip threatened to finish them, if they again come across them. It is alleged that one Sakharam Jadhav intervened, at that time, accused Santosh Gaikwad abused on caste basis and fired one shot of his

pistol on the ground and another shot on the legs of Sakharam, as a result of which, he fell down. It is alleged that the mob present there apprehended both Santosh Gaikwad as well as his companion and thereafter, FIR came to be registered.

4. It is submitted that, infact appellant has no nexus or connection with the above episode. That, even going by the FIR, no role is attributed to him. There was no utterance on caste abuse and as such there is no bar under section 18 of Atrocities Act. Learned counsel pointed out that whatever investigation has been done it does not reveal that accused was armed with any sort of weapon and even his specific role is not defined. That even witnesses whose statements are recorded are all interested and related witnesses. No independent witness has been examined. Learned counsel emphasized that apart present appellant belongs to special backward class and hence provisions of Atrocities Act are not applicable to him. That, appellant and accused are strangers. That, even FIR is lodged at belated stage. Lastly it is strenuously submitted that except accused No.1 Santosh Gaikwad all other co-accused with similar allegations are set at liberty and their bail applications have been granted. A copy of the same is annexed herewith. For above grounds, it is prayed that, present appeal be allowed by imposing all conditions imposed by this Court.

5. While opposing the appeal, learned APP pointed out that on petty count of coming across the vehicle on road accused persons including present appellant who were in the vehicle picked up quarrel and labourers were abused and one of the accused was possessing pistol and he fired the same and injured one Sakharam. That, offence is serious. Appellant has bad antecedents. He was amongst the accused persons who were illegally possessing arms and as such learned trial judge has rightly rejected the bail application filed by present appellant and he prays for similar treatment through the instant appeal.

6. We have gone through the papers before us. Admittedly, present respondent No.2 seems to have set law into motion by approaching police on 31.05.2022 alleging that, in the evening of 30.05.2022, when informant and his companions were celebrating completion of season of sugarcane cutting, a Scorpio Jeep occupied by accused and co-accused asked them to clear the way. There was some verbal exchange of words followed by slapping to one of the labour and as the same was questioned Santosh Gaikwad after abusing on caste basis, took out pistol and fired two shots one of which was allegedly hit on the leg of one Sakharam.

7. In above backdrop, FIR bearing C.R. No.124 of 2022 came to be registered at Majalgaon Rural Police Station, Dist. Beed for the offences

punishable under sections 307, 143, 147, 148, 149, 323, 504, 506 of Indian Penal Code and under sections 25(3), 27 of Arms Act and under Sections 4(1)(i)(s), 3(1)(r) and 3(1)(s) of the Atrocities Act.

8. We have carefully gone through the FIR at page No.42A which is at the instance of one Karan Ganesh Jadhav. It seems that after incident on road, mob of about 50 to 60 people gathered and went towards bus stand. Persons coming in the Scorpio Jeep also had reached there. It is stated in the FIR that such persons were Dilip, Santosh Gaikwad and 2 to 3 other persons. When some persons in the mob questioned accused persons, it is alleged that by referring the caste, Santosh Gaikwad addressing him as *Mahardya*, asked him not to fall in the incident and thereafter, he fired from the pistol. Sakharam allegedly sustained injury to his leg. Thereafter, said Santosh Gaikwad and others were apprehended at the spot. Other persons in the Scorpio, on inquiry allegedly give their name as Suraj More, Munna Tour and Balli Gandhare.

9. Therefore, here it is apparent that, *prima facie* allegation of slapping, abuse and firing pistol is attributed to Santosh Gaikwad. Our attention is invited to the order of this Court dated 08.12.2022 by which except Santosh Gaikwad other accused were granted bail. Learned APP could not point out as to why further custody of appellant is required. Apparently,

no role is also specified as against present appellant is concerned. Therefore, appeal deserves to be allowed. Accordingly, we proceed to allow the appeal and pass following order :-

**ORDER**

- (i) The criminal appeal stands allowed.
- (ii) The impugned order passed by the learned Additional Sessions Judge, Majalgaon, below Exhibit-8 in Sessions Case No.43 of 2022, dated 12.10.2022 stands set aside to the extent of present appellant is concerned. The application stands allowed.
- (iii) Appellant - Shrikrushna S/o Sukhdeo Gandhare, be released on bail on furnishing PR. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety in the like amount, in connection with Crime No.124 of 2022 registered at Majalgaon Rural Police Station, Tal. Majalgaon, District Beed for the offences punishable under sections 307, 143, 147, 148, 149, 323, 504, 506 of Indian Penal Code and under sections 25(3), 27 of Arms Act and under Sections 4(1)(i)(s), 3(1)(r) and 3(1)(s) of Atrocities Act, 1989.
- (iv) He shall not tamper with the evidence of the prosecution in any manner.
- (v) Bail before the Trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)