

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

CRIMINAL APPEAL NO. 1005 OF 2022

Bhaskar S/o. Dashrath Hiwarde,
Age : 50 Years, Occu. : Agriculture,
R/o. Khirdi, At Post Khirdi,
Tq. Khultabad, Dist. Aurangabad.

... Appellant

Versus

1. The State of Maharashtra,
Through Police Station Khultabad,
Tq. Khultabad, Dist. Aurangabad.

2. Kishor S/o Nana Chavan,
Age : 30 Years, Occu. : Labour,
R/o. Khirdi, Tq. Khultabad,
Dist. Aurangabad through
Police Station Khultabad,
Tq. Khultabad, Dist. Aurangabad.

and

R/o. Khirdi, Tq. Khultabad, Dist. Aurangabad

... Respondents

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Mr. S. T. Veer, Advocate for Appellant.

Mr. A. M. Phule, APP for Respondent No.1 – State.

Mr. Prasanna T. Athwale, Advocate for Respondent No.2.

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

RESERVED ON : 31st JANUARY 2023.

PRONOUNCED ON : 16th FEBRUARY 2023.

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

1. This appeal is directed against the judgment and order of learned Special Judge, under the Atrocities Act, Aurangabad dated 15.12.2022, by which bail application of present appellant arising out of Crime No. 366 of 2022 registered for offences punishable under sections 302 read with 34 of Indian Penal Code and under section 3(1)(r), 3(1)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "Atrocities Act") has been rejected.

2. Learned counsel for the appellant pointed out that informant and appellant are neighbours since long. Appellant has no criminal antecedents. Rather informant is history-sheeter and he is an accused in a crime for commission of offence under sections 336, 427, 186, 504 of Indian Penal Code. It is pointed out that there is dispute between informant and appellant on account of '*bandh*' in between their field. That, in such backdrop, false and afterthought report came to be lodged on 24.08.2022 alleging an occurrence taking place on 22.8.2022 about appellant assaulting Kiran, who is cousin of informant and abusing both, Kiran and informant on caste basis. It is pointed that infact there was no episode of caste abuse or assault. That, there is no witness to the alleged occurrence. Taking us though the FIR, it is alleged that deceased Kiran approached informant informing about cattle of appellant entering in the field of informant and therefore, they both decided to give

understanding to appellant. It is pointed out that it is alleged that there was quarrel between appellant and deceased Kiran and after abusing on caste basis, deceased Kiran was assaulted by axe after a short scuffle between them.

3. Learned counsel pointed out that as there was scuffle, there was involvement of deceased Kiran also. It is pointed out that Kiran was shifted to hospital and while undergoing treatment he was reported to have succumbed to the injuries. It is pointed out that thereafter the delayed report came to be lodged which was completely false and afterthought to falsely implicate the applicant.

4. It is next pointed out that there was no material in support of case of caste abuse or assault by appellant. Leaned counsel emphasized that merely to derive monitory benefits which would ensue on account of death of Kiran, provisions of Atrocities Act have been invoked with ulterior motive that appellant should not get bail. It is pointed out that even statements of witnesses are recorded at belated stage. The alleged incident of abuses has not taken place in public view and therefore provisions of Atrocities Act would not be attracted. Learned counsel submitted that there is every possibility of Kiran having fallen and suffered head injury and there was no assault by use of any axe. Even recovery alleged to be caused is doubtful. Appellant had preferred bail application below Exhibit-4 in Special Case No. 324 of 2022 before

learned Special Judge under the Atrocities Act. As there was no incriminating material and in spite of investigation being over and charge-sheet being filed, learned Judge ought to have appreciated the same and ought to have granted bail, but it failed to do so and hence it is prayed that present appeal for bail deserves to be granted.

5. Above appeal is strongly opposed by the State by pointing out that informant was present since beginning. Informant and deceased Kiran both went to give understanding to appellant-accused to prevent his cattle entering in their field and damage the standing crop. Getting annoyed with this fact and in the backdrop of dispute over the *bandh*, after abusing on caste basis accused went to his house and returned back with axe. Therefore, intention of accused was very clear. He used the axe and assaulted deceased Kiran. Deceased died because of the head injury inflicted by the axe. Therefore appellant is responsible for homicidal death of Kiran. Occurrence of caste abuse has also come in the FIR which is lodged by informant who was eye witness to the occurrence. Investigation had revealed that appellant is solely responsible for the occurrence and death of Kiran. These aspects have been rightly appreciated by the learned Special Judge and relief has been refused. Here also, no case has been made out for grant of bail and hence he prays to dismiss the application.

6. Leaned counsel for respondent – original informant has also strongly opposed the appeal advancing similar points like abuse on caste basis followed by assault on deceased Kiran by axe, grave offence is being committed and there is crime on caste basis and therefore appellant does not deserve the relief as prayed before this court. He too prayed to dismiss the application.

7. We have heard both sides. We have also examined and appreciated the FIR, statements of witnesses, panchanama and entire charge-sheet before us. It seems that informant and accused are immediate neighbours and having respective fields in village Khirdi. It is the case of prosecution that they being immediate neighbours, both were aware of their respective caste. It seems that there is dispute over *bandh* between informant and accused-appellant. There was some occurrence in which cattle of accused reportedly entered into the field of informant and this was informed by deceased Kiran to the informant and therefore informant and Kiran, who is cousin of informant, both went to question and give understanding to appellant. It is alleged in the FIR that, getting enraged for such questioning, appellant initially abused them on caste basis. This resulted into scuffle between deceased Kiran and appellant. FIR shows that thereafter appellant rushed to his house and returned back with axe in his hand. Therefore, it *prima facie* shows that appellant had intention to commit serious offence. He

seems to have targeted head of deceased Kiran. Therefore, intention and knowledge has also *prima facie* come on record. Two days thereafter, deceased Kiran seems to have succumbed to the head injury and thereafter report seems to have been lodged. Considering the circumstances in which the incident had taken place, there may have been delay and as such it is not significant. The defence raised before us about Kiran accidentally falling after scuffle does not seem to be probable, in view of the scene of occurrence panchanama.

8. Though one single blow was given, it was with force and that single blow seems to have turned out to be fatal. There is already a dispute between parties on account of *bandh* and therefore bitter relations were existing since prior to the occurrence. Assaults seems to have carried out on petty count and life of a young man has been lost. Under these circumstances possibility of repetition of crime cannot be ruled out if present appellant is released. Though charge-sheet is filed and co-accused is set at liberty, considering the role attributed to present appellant, we too are of the opinion that the manner in which the incident had taken place and the severity of the offence coupled with caste abuses, we do not find it a fit case for grant of bail. Hence, there being no merit, we reject the prayers.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)