

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.5 OF 2023

Pawan Diliprao Sonwane
Age: 32 years, Occu.: Pharmacist
R/o. Bhavani Road, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad

.. Appellant

Versus

1. The State of Maharashtra
Through Police Station Tuljapur,
Dist. Osmanabad.

2. Dattatraya Rambhau Salunke
Age: 54 years, Occu.: Service,
R/o. Vishwasnagar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad

.. Respondents

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Mr. S. J. Salunke, Advocate for appellant.
Mrs. V. S. Choudhary, APP for respondent No.1 - State.
Mr. Yogesh H. Jadhav, Advocate for respondent No.2 (Appointed).

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

DATE : January 30, 2023.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Admit.

2. Present appeal has been filed under Section 14-A(2) of the
Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act,

1989 (hereinafter referred to as the "Atrocities Act") to challenge the order of rejection of bail application by learned Special Judge, under the Atrocities Act, Osmanabad in Bail Application No.642 of 2022 on 17.12.2022. The said application was filed under Section 439 of the Code of Criminal Procedure. The appellant was arrayed as accused in Crime No.381 of 2022 registered with Tuljapur Police Station, Dist. Osmanabad for the offences punishable under Sections 307, 353, 504, 506 read with Section 34 of Indian Penal Code and under Sections 3(2)(va), 3(1)(r), 3(1)(s) of the Atrocities Act.

3. Heard learned Advocate Mr. S. J. Salunke for the appellant, learned Advocate Mrs. V. S. Choudhary for respondent No.1 - State and learned Advocate Mr. Yogesh H. Jadhav for respondent No.2 (Appointed).

4. Learned Advocate for the appellant has vehemently submitted that the investigation is now over and charge-sheet has been filed on 13.01.2023. It has been alleged by the informant – respondent No.2 that the appellant by abusing the informant in filthy language also involving his caste had assaulted him by iron *katti* (Sickle). He had received injuries to his head and abdomen. Now, the weapon allegedly used in the commission of the crime has been seized. The informant is regular in filing such complaints. The Medico Legal

Certificate issued by Rural Hospital, Tuljapur is doubtful and it could not have been stated that one of the injury to the informant was dangerous to life. When the evidence is collected and charge-sheet is filed, then the custody is not further required. It was also pointed out that it was stated before the trial Court that there are criminal antecedents of the applicant and he is involved in three cases, however, two out of those three cases have resulted in acquittal and only one under Sections 353, 332, 504 of Indian Penal Code is pending. For that purpose, bail cannot be denied to the appellant.

5. Per contra, the learned APP as well as learned Advocate, who is appointed to represent the cause of respondent No.2, strongly opposed the appeal and supported the reasons given by the learned Special Judge. It is specifically stated in the FIR that the informant had gone to the spot along with other employees for removal of encroachment. The informant is serving as Inspector and Head of Encroachment Removal Department of Nagar Parishad, Tuljapur. When the informant went in front of the medical shop of the appellant, the appellant started abusing the informant and by taking iron *katti* (sickle), he assaulted the informant on his head and abdomen. The medical certificate shows that the injury to the informant was dangerous to his life. He was admitted for a considerable time in the hospital. The appellant has criminal

antecedents. Perusal of the charge-sheet would also disclose that there is sufficient evidence against the appellant, therefore, the learned Special Judge has rightly refused to exercise discretion in favour of the appellant.

6. The first and the foremost fact that is required to be noted is that the learned Special Judge has decided the application on 17.12.2022 and the charge-sheet came to be filed on 13.01.2023. Therefore, the charge-sheet was not before the learned Special Judge, however, the police papers were before him. They could have been called by him for perusal. The appellant was seeking bail under Section 439 of the Code of Criminal Procedure and, therefore, the yardsticks to be applied for dealing such applications are different from those applications under Section 438 of the Code of Criminal Procedure. Whether the further physical custody of the applicant is required or not should be the prime requirement. The appellant came to be arrested on 04.12.2022 and since 09.12.2022, he is in magisterial custody. During his police custody period, it is stated that he has discovered the weapon also. Perusal of the FIR would show that it was not stated by the informant as to what was the reason for the appellant to react in such a way, however, in the supplementary statement all those facts have been stated. The FIR was lodged on 14.10.2022 and the supplementary statement was recorded on

16.10.2022. The said delay in recording the supplementary statement as well as the delay in disclosure of the history would be considered by the learned Trial Judge at the time of trial.

7. As regards the lodging of FIR by the informant against other persons under Sections 353 etc. of Indian Penal Code and the judgment in that case acquitting all those accused cannot be taken into consideration, as the law does not require antecedents of informant to be considered. Rather the law requires that the antecedents of the accused are required to be considered and in this case there were three offences against the appellant. It is stated that out of those three cases, he is acquitted in two cases and only one case under Section 353 of Indian Penal Code is still pending. The Medico Legal Certificate definitely shows that the informant has suffered injury to his head, which was dangerous to life. Both the certificates have been produced at the initial stage i.e. provisional as well as final certificate. The bed-ticket of the informant has also been collected. Statements of witnesses have been recorded under Section 161 of the Code of Criminal Procedure, which *prima facie* supports the prosecution.

8. Taking into consideration note of all these material, it can be said that the part of collecting evidence is over and, therefore, the

further physical custody of the appellant is not required. It will definitely take time to stand his trial and till then he need not be kept behind bars. He can be released on bail by imposing strict conditions taking into consideration his past conduct as well as the evidence that has come in this case. Even the learned Special Judge could have come to the same conclusion, if he would have perused the police papers in proper perspective. Every accused is not required to be kept behind bar till the trial is concluded. Appeal, therefore, 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, Osmanabad in Special Case No.642 of 2022 dated 17.12.2022 stands set aside. The said application stands allowed.
- iii) Appellant - Pawan Dilip Sonwane, who has been arrested in connection with Crime No.381 of 2022 registered with Tuljapur Police Station, Dist. Osmanabad for the offences punishable under Sections 307, 353, 504, 506 read with Section 34 of Indian Penal Code and under Sections 3(2)(va), 3(1)(r), 3(1)(s) of the Atrocities Act, be released on P.R. Bond of Rs.30,000/- with two solvent sureties of

Rs.15,000/- each.

iv) The appellant shall not enter the jurisdiction of Tuljapur, Dist. Osmanabad till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his mobile number to the Trial Court as well as to the Investigating Officer.

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

vi) He shall not indulge in any criminal activity.

vii) Bail before the Trial Court.

viii) 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