

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

CRIMINAL APPEAL NO.7 OF 2023

**PARMESHWAR PANDIT MADAN
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Mr. B. S. Bhale, Advocate for appellant
Mr. R. V. Dasalkar, APP for respondent No.1 – State
Mr. D. G. Kamble, Advocate for respondent No.2 (Appointed
through Legal Aid)

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.**

DATE : 03.03.2023.

PER COURT :-

Admit.

2. Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act to challenge rejection of bail under Section 439 of the Code of Criminal Procedure at Exh.8 in Special Case No.263/2022 by the learned Additional Sessions Judge, Jalna on 17.12.2022.

3. The appellant is the original accused in Crime No.478/2022 registered with Badnapur Police Station, Taluka

Badnapur, District Jalna for the offence punishable under Sections 307, 506 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, lodged at the behest of present respondent No.2 on 28.09.2022 in respect of an incident that had allegedly taken place on 25.09.2022.

4. Heard learned Advocate Mr. Bhale for the appellant, learned APP Mr. R. V. Dasalkar for respondent No.1 – State and learned Advocate Mr. D. G. Kamble for respondent No.2.

5. At the outset, we would like to say that the investigation is over and charge-sheet is filed on 21.11.2022. Under such circumstance, the further custody of the appellant is not required for the purpose of investigation. The appellant came to be arrested on 29.09.2022 and as per the charge-sheet the weapon i.e. scissor used in commission of the crime has been recovered and it appears from the seizure panchanama dated 01.10.2022 that it has been recovered from a cattle shed in Gut No.246 from Hiwra Shiwar and it has been produced by the brother of the present accused. Definitely, the trial Court will have to go into the aspect under which provisions of law this seizure is admissible.

6. The First Information Report (F.I.R.) contends that around 6.30 p.m. on 25.09.2022 the informant – respondent No.2 had placed his mobile for charging in the hair cutting saloon owned by one Balu Nimbalkar. The informant thereafter went around 7.30 p.m. to get back his mobile, at that time, Balu Nimbalkar, Subhash Madan came along with two - three persons. The informant was along with one Bhagwat Madan. Then the present accused went there and started asking the informant to give money to him for drinking liquor. The informant refused, but the accused was insisting that he should either give money or he should purchase liquor for him. The informant told him that he would purchase liquor for him after he comes from duty in the morning. Thereafter he took his mobile and sat on his motorcycle. At that time, the accused went from back side and stabbed the scissor in the neck of the informant. It resulted in bleeding injury. Thereafter he stabbed the scissor on the left thigh, which had also created severe bleeding injury to him. The others then intervened and took the informant to the hospital. In the process of catching hold of accused, Bandu Nimbalkar had sustained injury.

7. Now the investigation is over. Statements of the witnesses have been recorded under Section 161 of the Code of Criminal

Procedure. The respondent No.2 – informant is the member of Scheduled Caste and therefore the investigation has been carried out by Sub Divisional Police Officer, Jalna.

8. The injury certificate of the informant shows two injuries, one is contused lacerated wound on the left leg (5cm x 2cm x 2 cm) which was grievous in nature and also noting the fracture to the femur bone. The second wound is lacerated wound (7cm x 2 cm x 5 cm) deep on lateral side of neck. It was also grievous and it can be seen that the vocal cords and cartilage was exposed. Definitely, those injuries are serious in nature. However, the fact remains is that the reason behind the quarrel was from the point of insistence by the accused to give him money for drinking liquor. It will have to be considered by the learned trial judge as to whether the accused had intention to kill or it was an act of the spur of moment. In other words, whether the case is covered under Sections 307 and 326 of I.P.C. will have to be decided.

9. As on today, the investigation is over and it will take very long time to stand the trial. The learned Special Judge has passed very cryptic order when in fact it is expected that all the criterias those are required for considering an application under Section 439

of the Code of Criminal Procedure should be considered. It is not expected that the Special Judge should pass such cryptic orders. Every serious injury does not prevent the concerned judge from exercising the discretionary power. The other criterias are also required to be considered. The learned trial Judge ought to have granted application Exh.8 and could have imposed stringent conditions on the appellant. Therefore, the said order deserves to be set aside.

10. For the aforesaid reasons, following order is passed.

ORDER

- (i) The appeal stands allowed.
- (ii) The order passed by the learned Special Judge under the Atrocities Act / Additional Sessions Judge, Jalna below Exh.8 in Special Case No.263/2022 dated 17.12.2022 is hereby set aside.
- (iii) The appellant be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs. 25,000/- each.
- (iv) The appellant shall not reside in village Keli Gavhan, Taluka Badnapur, District Jalna nor he should visit the said village for any reason and for any duration till the trial of Special Case No.263/2022 is over.
- (v) He shall reside elsewhere and shall give his complete address, phone number etc. of the place where he intends to

reside till the decision in the trial to the trial Court as well as the Investigating Officer and Incharge of Badnapur Police Station.

- (vi) He shall not tamper with the evidence of the prosecution in any manner.
- (vii) He shall not indulge in any criminal activity.
- (viii) Bail before the Trial Court.
- (ix) 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.

[Y. G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]

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