

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL No. 203/2023.

Shaikh Ansar Shaikh Isa,
Aged about 32 years,
Occupation Labour, resident
of Barde Plots, Khamgaon,
District Buldhana.

... **APPELLANT.**

VERSUS

1.State of Maharashtra,
Police Station Officer,
Khamgaon Rural Police Station,
Khamgaon, District Buldhana.

2.Vijay Pundlik Hiwrale,
Aged about 62 years,
Occupation – Agriculturist,
resident of at post Chitoda,
Ambikapur, Taluq Khamgaon,
District Buldhana.

... **RESPONDENTS.**

Mr. B.K. Suchak, Advocate for the Appellant.
Mr.V.A. Thakare, A.P.P. for Respondent No.1/State.
Mr. G.K. Kale, Advocate [appointed] for Respondent No.2.

**CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.**
DATE : APRIL 17, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard learned Counsel for the parties. With their consent the appeal is taken up for final disposal at the stage of admission.

Admit.

2. This is an appeal challenging the order dated 23.02.2023 passed in Regular Bail Application No.39/2023 by the Additional Sessions Judge, Khamgaon, whereby regular bail application of the appellant came to be rejected.

3. At the instance of a report dated 03.02.2023 lodged at the instance of respondent no.2, a Crime No.48/2023 was registered by Police Station Khamgaon [Rural] for the offence punishable under Sections 307, 342, 143, 146, 147, 148, 149 and 506 of the Indian Penal Code and Section 3[2][va] of the Scheduled Tribes and

Rgd.

Scheduled Caste [Prevention of Atrocities] Act, 1989. It is informants case that on 02.02.2023 around 11.30 a.m. he was informed that some persons have abducted his nephew namely Amit and confined him at the place of co-accused Sk. Salim. Accordingly the informant along with other including police constable went to the concerned place. They have seen that the injured Amit was lying in a room where 7 persons were present including the appellant. On enquiry, the injured Amit stated that all of them beat him by fists blows and kicks and iron rod, therefore, the report.

4. The learned Counsel appearing for the appellant would submit that the appellant is in jail from 03.02.2023 till date. The investigation is practically complete. Injured is discharged. There are no specific allegations against the appellant, and therefore, he deserves for release on bail.

5. The learned A.P.P. and the learned Counsel appearing for the informant resisted the bail by contending that yet some of the accused are absconding. The iron rod is to be seized. There is

Rgd.

possibility of criminal violence in the village, and therefore, this is not a fit case to grant bail.

6. Perused the available papers, including the case diary. It reveals from the discharge papers that within one week i.e. on 09.02.2023 the injured came to be discharged. There were 12 injuries on the person of the victim. Particularly we have gone through the statement of the injured which assumes significance, as there is no other eye witness. The injured has specifically stated that the co-accused Sk. Samil [accused no.1] and Sk. Sharukh [accused no.6] beat him by means of iron rod at his head, back and legs, whilst rest of them beated him by means of fists blows and kicks. We have also gone through the statement of police constable, who has stated that when they entered into the room, they have seen 4 persons in the room, in which name of appellant has not been stated.

7. It reveals from the investigation papers that the role assigned to the appellant is about beating by fists blows and kicks. Abscondance of remaining accused cannot be a reason to curtail the

Rgd.

liberty of the appellant. The investigation appears to be practically complete. As regards to the allegations of anticipated threat of violence is concerned, necessary conditions can be imposed. Already injured has been discharged long back. Considering all these circumstances, we find that the appellant has made out a case for grant of bail, hence, we proceed to pass the following order.

ORDER.

- [i] Criminal Appeal is allowed and disposed of.
- [ii] the impugned order dated 23.02.2023 passed in Regular Bail Application No.39/2023 by the Additional Sessions Judge, Khamgaon, is hereby quashed and set aside.
- [iii] The appellant -Shaikh Ansar Shaikh Isa be released on regular bail in connection with Crime No.48/2023 registered by Police Station Khamgaon [Rural] for the offence punishable under Sections 307, 342, 143, 146, 147, 148, 149 and 506 of the Indian Penal Code and Section 3[2][va] of the Scheduled Tribes and Scheduled Caste [Prevention of Atrocities] Act, 1989, on his furnishing P.R. bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

- [iv] The appellant shall not enter within the territorial jurisdiction of village Chitoda, Ambikapur, Taluka Khamgaon, District Buldhana till the completion of the trial.
- [v] The appellant shall attend the concerned police station on every Sunday and Wednesday in between 10 a.m. to 12 noon till the filing of the charge sheet or 90 days, whichever is earlier.
- [vi] The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution evidence.

JUDGE

JUDGE