

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

CRIMINAL APPEAL NO.904 OF 2022

[Prabhu s/o Dhondu Rathod and Anr. ..V/s.. State of Maharashtra and
Anr.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr S. V. Sirpurkar, Advocate for the Appellants.
Ms M. H. Deshmukh, Addl. P. P. for the Respondent No.1/State.
Mr A. M. Balpande, Advocate (Appointed) for the Respondent No.2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 23rd FEBRUARY, 2023.

. Heard.

2. This is an appeal in terms of Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, raising a challenge to the order of rejection of regular bail by Trial Court *vide* order dated 18.11.2022 in Atrocity Special Case No.34 of 2022.

3. At the instance of first information report (FIR) lodged by the father of injured, crime has been registered *vide* CR No.228 of 2022, with Lonar Police Station, District Buldana, for the offences punishable under Sections 307, 341, 143, 147, 148, 149 and 323 of the Indian Penal Code, 1860 (IPC) and under Sections 3(1)(r)(s) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. It is the prosecution case in nutshell that the accused are residents of same village and were indulging into illicit liquor business. The informant's son had quarrel with the accused, for

which there was past instance of abuses. On 27.07.2022, all accused in furtherance of common intention, assaulted victim Santosh and caused him injuries of grave nature. The assault was by sickle, knife, wooden sticks and was on a vital part, and therefore, the report was lodged for the offence punishable under Section 307 of the IPC alongwith other offences.

5. This appeal has been preferred by accused Prabhu Rathod and Sudam Rathod. Since we have expressed our non-inclination to grant bail to Appellant No.1 Prabhu Rathod at this stage, the learned Counsel appearing for the Appellants seeks for withdrawal of appeal to the extent of Appellant No.1 Prabhu Rathod with liberty to apply fresh after three months.

6. Since the appeal is pressed to the extent of accused Sudam Rathod, we have considered the rival contentions to that regard only. It is stated in FIR that at relevant time, Prabhu assaulted injured Santosh at his head by means of Sattur, one Krushna assaulted at hand by knife and one Sopan dealt a stick blow at the shoulder of injured. At relevant time, Sudam (Appellant No.2) was alleged to be present and pressed the injured and thus, assisted the assailants. We have gone through the statement of victim as well as other eye witnesses, who have stated in similar fashion. We have also gone through the injury certificate, which says that all injuries were of simple nature.

7. At present, only accused Sudam is before us. We have particularly considered his role that he has pressed the injured and assisted co-accused. Admittedly, he was not holding any

weapon at the time of occurrence. Now, investigation is complete and charge sheet has been filed. Considering peculiar role of Appellant No.2 Sudam Rathod, he can be released on bail by putting on certain terms.

8. In view of above, we pass the following order :

ORDER

i] Appeal to the extent of Appellant No.1 Prabhu Dhondurathod stands disposed since withdrawn with liberty to apply afresh after three months, if charges are not framed.

ii] Appeal to the extent of Appellant No.2 Sudam Dhondurathod is **allowed**.

iii) The impugned order dated 18.11.2022 to the extent of rejection of bail of Appellant No.2 Sudam Dhondurathod is hereby quashed and set aside.

iv) The Appellant No.2 Sudam Dhondurathod is released on bail on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties of like amount.

v) The Appellant No.2 Sudam Dhondurathod shall attend concerned Police Station on first Monday of each month in between 10:00 a.m. to 2:00 p.m., till conclusion of trial.

vi) The Appellant No.2 Sudam Dhondurathod shall not tamper with the prosecution evidence and or

influence the prosecution witnesses.

vii) The criminal appeal is disposed in above terms.

viii) Fees of appointed Counsel be given as per rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

TAMBE