IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 22nd OF JANUARY, 2024

CRIMINAL APPEAL No. 267 of 2024

BETWEEN:-

SANY @ UDIT PAWAR S/O SHRI PRAKASH SINGH PAWAR, AGED ABOUT 19 YEARS, OCCUPATION: STUDENT SUREYAPURA MORAR DISTRICT GWALIOR (MADHYA PRADESH)

.....APPELLANT

(SHRI PADAM SINGH, LEARNED COUNSEL FOR THE APPELLANT),

AND

1. **THE STATE OF MADHYA PRADESH INCHARGE POLICE STATION THROUGH POLICE STATION MORAR DISTRICT GWALIOR (MADHYA PRADESH)**

2. **SOORAJ JATAV TIKONIYA MORAR GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI P.P.S. BAJITA, LEARNED PPS),

This appeal coming on for HEARING this day, the court passed the following:

ORDER

The appellant has filed this first criminal appeal under Section 14-(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 being aggrieved by order dated 07.12.2023 passed by Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989] (hereinafter would be referred as to the "Act of 1989"), Gwalior whereby bail application under Section 439 of Cr.P.C. of appellant has been rejected. His

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previous appeal was dismissed as withdrawn vide order dated 21.12.2023 in Cr.A.No.15542 of 2023. Thereafter, final report was submitted on 22.12.2023.

Learned Counsel for the State submits that the complainant has been informed about filing of this appeal in compliance with mandate of Section 15-A of the Act of 1989.

The appellant has been arrested on 06.12.2023 relating to FIR at Crime No.681 of 2022 registered at Police Station Morar District Gwalior for offence punishable under Sections 327, 294, 323, 506, 324, 329, 34 of IPC and Sections 3(1) (da), 3 (1) (Dha), 3(2)(v), 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

As per the case of prosecution, Suraj Jatav reported to SHO PS Morar Distt. Gwalior that on 01.8.2022 he was sleeping at the house of Ishwari Prasad. Around 2 in the night, Manku Pawar came there and asked for money to consume liquor. Manku started abusing them in filthy language with reference to their caste. Anjali and Priyanka went down stairs. Manku asked Anjali to give money. Manku assaulted Anjali with axe. Anjali sustained injury on her right hand. As he tried to intervene Manku assaulted him with blunt side of axe. He sustained injury on right shoulder. Thereafter, Manku called his associates Sany Pawar (applicant) and Vivek Rajput. Sany Pawar armed with rod and Vivek armed with danda came there and stated abusing them with reference to their caste and assaulted him and his uncle Ishwari Prasad. Meanwhile, police arrived on the spot, so accused fled away. Police took them for treatment. They were referred to JAH Hospital. After recovery and medical treatment, he had come for lodging report. On such allegations, Police Station Morar registered FIR at Crime No.681 of 2022 for offence punishable under Sections 327, 294, 323, 506, 34 of IPC and Sections 3(1) (da), 3 (1) (Dha), 3(2)(v), 3(2)(v-a) of the

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Act of 1989 against Manku Pawar, Sany Pawar and Vivek Rajput. Injured were forwarded for medico legal examination. Injury on right hand of Anjali was found to be caused by sharp edged weapon and in X-Ray examination, fracture of humorous bone was found. Injury caused to Suraj and Ishwari Prasad were found to be simple in nature. Prosecution for offence punishable U/s 324 and 329 of IPC were added. Applicant was arrested on 6.12.2023. He is in custody ever since. On completion of investigation, final report was submitted on 22.12.2023.

Learned counsel for the appellant, in addition to the grounds mentioned in the appeal, contends that as per case of prosecution, appellant has reached the spot of incident after Manku has already assaulted Anjali. Therefore, no offence punishable under Section 329 read with Section 34 of IPC and the Act of 1989 is made out against the appellant. Appellant is 20 years age. He is pursuing study. There is no likelihood his absconsion leaving his home and study. There is no likelihood of his tampering with the evidence by the applicant. The trial would take time to conclude. No further custodial interrogation is needed. Therefore, the appellant may be extended benefit of bail.

Per contra, learned counsel for the State opposes the appeal on the ground of gravity of alleged offence and cites history of two cases against the appellant.

In reply, learned counsel for the appellant submits that appellant was released on bail in other matter. He has never been convicted.

Heard learned counsel for the parties and perused the case diary.

Considering the arguments advanced by both the parties and overall

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circumstances of the case, regard being had to the young age of the appellant but without expressing any opinion on merits of the case, while setting aside order dated 07.12.2023 passed by Trial Court, this Court is inclined to release the appellant on bail. Thus, the appeal is allowed.

Accordingly, it is directed that appellant **Sany alias Udit Pawar** shall be released on bail in relation to Crime No.681 of 2022 registered at Police Station Morar District Gwalior for offence punishable under Sections 327, 294, 323, 506, 324, 329, 34 of IPC and Sections 3(1) (da), 3 (1) (Dha), 3(2)(v), 3(2) (v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, upon furnishing a personal bond in the sum of **Rs.1,00,000/- (Rupees One Lac Only) with one solvent surety in the like amount** to the satisfaction of the Trial Court, for compliance with the following conditions,: **(For the sake of convenience of understanding by accused and surety, the conditions of bail are also reproduced in Hindi as under):-**

(1) Appellant shall remain present on every date of hearing as may he directed by the concerned court;

(1) आवेदक संबंधित न्यायालय के निर्देशानुसार सुनवाई की प्रत्येक तिथि पर उपस्थित रहेगा।

(2) Appellant shall not commit or get involved in any offence of similar nature;

(2) आवेदक समान प्रकृति का कोई अपराध नहीं करेगा या उसमें सम्मिलित नहीं होगा।

(3)Appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them/him/her from disclosing such facts to the Court or to the police officer;

(3) आवेदक प्रकरण के तथ्यों से परिचित किसी व्यक्ति को प्रत्यक्ष या अप्रत्यक्ष रूप से प्रलोभन, धमकी या वचन नहीं देगा, जिससे ऐसा व्यक्ति ऐसे तथ्यों को न्यायालय या पुलिस अधिकारी

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को प्रकट करने से निवारित हो।

(4)Appellant shall not directly or indirectly attempt to temper with the evidence or allure, pressurize or threaten the witness;

(4) आवेदक प्रत्यक्ष या अप्रत्यक्ष रूप से साक्ष्य के साथ छेडछाड करने का या साक्षी या साक्षियों को बहलाने–फुसलाने, दबाव डालने या धमकाने का प्रयास नहीं करेगा।

(5) During trial, the Appellant shall ensure due compliance of provisions of Section 309 of Cr.P.C. regarding examination of witnesses in attendance;

(5) विचारण के दौरान, उपस्थित गवाहों से परीक्षण के संबंध में आवेदक धारा 309 दं.प्र.सं. के प्रावधानों का उचित अनुपालन सुनिश्चित करेगा।

This order shall be effective till the end of trial. However, in case of breach of any of the precondition of bail, the trial Court may consider on merits cancellation of bail without any impediment of this order.

The trial Court shall get these conditions reproduced on the personal bond by the accused and on surety bond by the surety concerned, if any of them is unable to write, the scribe shall certify that he had explained the conditions to the concerned accused or the surety.

C.C. as per rules.

(SANJEEV S KALGAONKAR)
JUDGE

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