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

CRIMINAL APPEAL NO.589 OF 2024

Manohar s/o Eknath Mhaske,
Age : 32 Years, Occupation : Agriculturist,
R/o Giroli Khd., Taluka Deulgaon (Raja),
District Buldana.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Deulgaon (Raja),
District Buldana.

2. Sau. Sandhya w/o Tryambak Zine,
Age 43 Years, Occupation: Cultivator,
R/o Giroli Khd., Taluka Deulgaon (Raja),
District Buldana.

.... RESPONDENTS

Mr. A. J. Thakkar Counsel h/f Mr. S. A. Thakkar, Counsel for
the appellant.
Mr. Nitin Autkar, APP for respondent No.1/State.
Ms. Aastha R. Sharma, appointed Counsel for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21.11.2024

ORAL JUDGMENT :

1. **Admit.**

2. Heard finally with the consent of learned Counsel
appearing for the parties.

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3. By preferring this appeal, the appellant has challenged the order passed by the learned Additional Sessions Judge, Buldana in regular Bail Application No.368/2024 by which the application of the present appellant for grant of bail is rejected.

4. The appellant is arrested on 19.09.2024 in connection with Crime No.297/2024 registered under Sections 115, 296, 351(1), 351(2), and 352 of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act of 1989'). It is alleged by the prosecution that on 30.07.2024 at about 11.00 a.m., when she was present in her agriculture field and doing the agriculture operations at that time, the co-accused Eknath Mhaske removed the bamboos which were installed at the fencing and also abused her as well as the other prosecution witnesses. It is alleged that the present appellant assaulted her and the other prosecution witnesses by means of the bamboo stick, due to which, her son has sustained the injuries. On the basis of the said report, police have registered the crime against the present appellant.

5. Heard learned Counsel Mr. Thakkar for the appellant who submitted that after registration of the crime, the appellant approached to the learned Special Court for grant of bail, but the same was rejected by the learned Special Court observing that the

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present appellant is the assailant and due to the assault, the injured has sustained the injuries and the offence under Section 3(1)(r) of the Act of 1989 is made out. He submitted that the learned Special Court has not considered that now the investigation is practically completed, further incarceration of the appellant is not required, the injured is also discharged from the hospital and the offence alleged are not punishable with imprisonment of life. As far as the apprehension regarding the tampering of the witnesses is concerned, all the witnesses are the family members of the informant. He submitted that considering now the investigation is practically completed, further incarceration of the appellant is not required. In view of that, he be released on bail.

6. Learned APP and learned appointed Counsel for the respondent No.2 strongly opposed the said application and invited my attention towards the various statements of the witnesses including the statement of the independent witness, who was present in the adjacent field, at the relevant time and submitted that the *prima facie* case is made out against the present appellant. The appellant is the assailant, who assaulted the injured by means of a stick. The injured has sustained the grievous injuries, if he is released on bail, he would tamper the prosecution evidence. In view of that, the order passed by the learned Special Court deserves to be maintained.

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7. After hearing both the sides and on perusal of the investigation papers, it reveals that due to the dispute on account of the boundary of the agricultural field, the alleged incident has taken place. The recitals of the FIR shows that it was the present appellant, who has removed the bamboo sticks and by abusing the informant and her family members, assaulted the son of the informant. Due to the assault, the son of the informant has sustained the grievous injury. The injury certificate is also on record. Admittedly, now the injured is discharged from the hospital and no further treatment is required by him. Considering the fact that now the investigation is practically completed and the charge sheet is yet to be filed, however, further incarceration of the present appellant is not required. The learned Special Court has not considered this aspect and rejected the application erroneously. Admittedly, the present appellant is seeking regular bail and not the anticipatory bail. It is well settled that bail is the rule and jail is an exception. Considering the reasons mentioned in the application and considering the fact that now further incarceration of the present appellant is not required. The order passed by the learned Special Judge, Buldana deserves to be quashed and set aside. Accordingly, I proceed to pass following order:

ORDER

(i) The appeal is allowed.

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(ii) The order dated 30.09.2024 passed by the learned Special Judge, Buldana in Regular Bail Application No.368/2024, is hereby quashed and set aside.

(iii) The appellant **Manohar s/o Eknath Mhaske** shall released on bail in connection with Crime No.297/2024 registered with Police Station, Deulgaon (Raja), District Buldana for the offence punishable under Sections 296, 115, 351(1), 351(2) and 352 of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The appellant shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.

8. The fees of the appointed Counsel be quantified as per rules.

9. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.