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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1040 OF 2024

Mallappa Janappa Bansode .. Appellant
Vs.
The State of Maharashtra and others .. Respondents

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Mr. Ghansham Jadhav, for appellant
Ms. Anamika Malhotra, A.P.P, for Respondent No.1 – State
Mr. Satyavrat Joshi i/b Samay S. Pawar for respondent nos. 2
to 4
Mr. Sunil Salunkhe, S.D.P.O. present in Court

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 21st JANUARY, 2025.

P.C.

1. Heard Mr. Jadhav, learned Counsel for the appellant and Mr. Joshi learned Counsel for the respondent – accused. The respondent accused nos. 2 to 4 are present before the Court.

2. Learned Counsel for the applicant has prayed for setting aside the impugned one line cryptic order passed by the Special Judge granting bail to the accused without complying the mandate of Section 15A of the SC ST act as already observed by this Court in Criminal Writ Petition (ST.) No. 18530 of 2023

dated 29th August, 2024. This Court (Coram : Revati Mohite Dere & Prithivraj K. Chavan, J.J.) in the order dated 29th August 2024 had made the following observations :-

“1. Learned Counsel for the petitioner has invited our attention to the fact that the Investigating Officer, Sub-Divisional Police Officer – Sunil Salunkhe, Jath Sub-Division, Jath, Dist. Sangli had not only violated the provisions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short ‘Act’) by giving Notice under Section 41A of the Cr.P.C. to the accused, though the same was not warranted but, even the learned Special Judge, Sangli by an order dated 20.07.2024 released all the accused on a personal bond and surety bond in the sum of Rs.15,000/- each, by passing a very cryptic and unreasoned order.

2. It is quite apparent from the record as well as the order of the Special Judge referred hereinabove that there has been a clear infraction of the mandate of the Sub-sections (3) and (5) of the Section 15A of the Act. Sub-sections (3) and (5) of Section 15A provide thus:-

“15-A. Rights of victims and witnesses --

(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor of the State Government shall inform the victim about any proceedings under this Act.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.”

3. *It is quite apparent that neither the petitioner (victim) nor his dependent have been heard before releasing the accused on bail. This is in clear breach of the mandate of the statute. Even the Public Prosecutor has not been heard.*

4. *Upon being asked, learned Counsel for the petitioner and the learned APP informed us that no reasoned order has been passed by the learned Special Judge. We have also ascertained the said fact from the Registrar (Judicial-I), who reiterated what was told to us by the learned Counsel for the petitioner and the learned APP.*

5. *In a recent judgment of the Hon'ble Supreme Court in the case of **Hariram Bhambhi Vs. Satyanarayan**, AIR 2021 SC 5610, it has been observed thus :-*

“19. When the High Court entertained S.B. Criminal Appeal No.2518/2019 on 7 November 2019, no notice was given to the appellant. The High Court allowed the application for bail. When the appellant moved the High Court for cancellation of bail, the Single Judge took the view that compliance with the principles of natural justice at that particular stage would cure the deficiency. There has been a clear infraction of the mandate of the statute. Sub-sections (3) and (5) have been introduced by the Parliament to ensure a right to be heard to the person against whom the offence is committed or to the dependents. These provisions must be scrupulously observed. We cannot agree with the finding of the Single Judge that the defect in not issuing notice to the victim or their dependent and depriving them of the opportunity to be heard in the concerned proceedings (for grant of bail) can be cured by providing them a hearing in a proceeding that arose subsequently (for cancellation of bail). Compliance with the principles of natural justice must be observed at every stage under the mandate of the statute.

21. We also emphasize that sub-section (3) of Section 15A provides that a reasonable and timely notice must be issued to the victim or their dependent. This would entail that the notice is served upon victims or their dependents at the first or earliest possible instance. If undue delay is caused in the issuance of notice, the victim, or as the case may be, their dependents, would remain uninformed of the progress made in the case and it would prejudice their rights to effectively oppose the defense of the accused. It would also ultimately delay the bail proceedings or the trial, affecting the rights of the accused as well.

23. While granting bail to the first respondent, the High Court in its order dated 7 November 2019 only recorded the submission of counsel for the first respondent that PW-2, the spouse of the deceased, had in the course of her statement recorded during the trial, stated that the deceased had gone with her brother Kishan Lal; that Kishan Lal had obtained an insurance policy in the name of the deceased and that the murder had been committed by Kishan Lal to obtain the proceeds of the insurance policy, with the help of his friends. There is absolutely no reasoning in the order of the High Court granting bail, after recording the submissions of the first respondent's counsel apart from noting that the public prosecutor had opposed the bail. The High Court held that it was just and expedient to release the first respondent on bail "keeping in view the facts and circumstances of the case". Such orders cannot pass muster. The duty to record reasons cannot be obviated by recording submissions, followed by an omnibus "in the facts and circumstances" formula. Brief reasons which indicate the basis for granting bail are essential, for it is the reasons adduced by the court which

indicate the basis of the order.

24. Before the High Court granted bail by its order dated 7 November 2019, the final report had been submitted on 6 September 2018. The final report under Section 173 CrPC contains a detailed analysis of the call data records of the accused who were in continuous contact with each other, as well as of their location in close proximity to the date and time of the incident. The bail order does not make any mention of factors that are relevant for the grant of bail, which are (i) the seriousness and gravity of the offence; and (ii) the role attributed to the first respondent in the commission of the crime. In this backdrop, the order of the High Court in granting bail cannot pass muster. Aggrieved by the order, the appellant had filed an application seeking its recall. The Single Judge of the High Court by the impugned order dated 8 June 2021 simply reiterated that the bail was granted on the basis of the statement of the wife of the deceased, PW.2, once again failing to show any engagement with the considerations that govern the grant of bail.

25. The appeal is accordingly allowed and the impugned order of the Single Judge of the High Court of Judicature at Rajasthan dated 8 June 2021 in S.B. Crl Bail Cancellation Application No. 21/2020 is set aside. The order granting bail to the first respondent dated 7 November 2019 shall stand set aside. The first respondent shall surrender into custody on or before 7 November 2021.”

6. Before we delve into other illegalities committed by the Investigating Officer, at this stage, we deem it appropriate to direct the Registry to place the order before

the Hon'ble the Chief Justice for taking appropriate action on the Administrative side against the learned Special Judge.

7. Meanwhile, the petitioner is at liberty to prefer an appeal under Section 14A of the said Act against the order passed by the learned Judge releasing the accused on bail.

*8. Stand over to **11th September 2024** at 2.30 p.m.”*

3. In the alternative, learned Counsel suggests that the applicant be directed to remain present before the trial Court on 27th February, 2025 and after giving due opportunity of being heard to the victims in view of Section 15A of the SC ST Act, the trial Court shall pass necessary orders on its own merits.

4. Mr. Joshi, learned Counsel for the respondent is in agreement with the said suggestion. He has tendered an affidavit-in-reply on behalf of the respondent nos. 2 to 4. The same is taken on record.

5. Indeed, the trial Court committed a grave illegality in releasing the respondents – accused by simply directing them to execute the personal bond and S.B. in the sum of Rs.15,000/-

each without hearing the victims. He is now directed to hear the respondents and the victims in view of Sub-section 5 of Section 15A of the Act and thereafter shall decide the application on its own merits without getting influenced by the observations made by this Court.

6. At this stage, learned APP informs that the State has also moved the trial Court for cancellation of bail of the respondents – accused. The trial Court shall hear the State as well at the time of deciding the application preferred by the respondents – accused seeking their bail.

7. The respondents and the applicant shall appear before the trial Court on 27th February, 2025. The learned Special Judge shall thereafter hear all the parties and shall decide and dispose of the application on its own merits.

8. The appeal is disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)