

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

CRIMINAL APPEAL NO.396 OF 2025

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Dadu @ Vrushant Balasaheb Sudke

Aged 22 Years, Occupation : Driver,

Residing at : Manmad, Taluka : Nandgaon,

District : Nashik.

...Appellant

Versus

1. **The State of Maharashtra**

(Through Investigating Officer,

Manmad Police Station, Manmad,

Taluka : Nandgaon, District : Nashik)

...Respondent No.1

2. **Shekhar Devidas Pagare**

Age : 27 Years, Occupation : Labour,

Residing at : Dr.Babasaheb Ambedkar

Chowk, Manmad, Taluka : Nandgaon,

District : Nashik.

**...Respondent No.2
(Original Complainant)**

Mr.Jayendra Khairnar a/w Ms.Gauri Kulkarni:-	Advocates for Appellant.
Mr.Ashok Gawai:-	APP for Respondent No.1 -State.
Mr.Rishabh Tiwari a/w Ms.Chaitali Bhogle, Mr.Vivekanand Krishnan, Mr.Amol Wagh, Mr.Sachin P. Patil and Mr.Sagar Kasar:-	Advocates for Respondent No.2 (Original Complainant).
Mr.Irfan Hazi Usman Shah-ASI:-	Manmad Police Station.

CORAM : S. M. MODAK, J.

DATE : 13th OCTOBER 2025

ORAL ORDER :-

1. Heard learned Advocate Shri.Khairnar for the Appellant, learned

APP and learned Advocate for the First-Informant-Shekhar who is the brother of the deceased – Shubham.

2. On the complaint of said Shekhar, there was an offence registered with Manmad Police Station – Nashik Rural under Sections 103(1), 126(2), 351(2), 61(2), 49, 3(5) of the Bharatiya Nyaya Sanhita, 2023 (“In short, “**BNS**”) and under Sections 3(2), 3(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“**SC & ST Act**”). It was registered against several persons including the Appellant.

3. This FIR is in respect of an assault that took place on the deceased Shubham on 3rd August 2024 at night time. The First-Informant Shekhar along with the deceased Shubham and their friends had gone to celebrate birthday ceremony at Pandurang Nagar. The incident took place when they were returning and they reached at Vivekanand Nagar. The Appellant along with the others have intercepted their motorcycles and they assaulted Shubham. The role assigned to this Appellant is use of chopper and piercing that chopper in the chest of the deceased. Initially, the deceased was taken to Prayas Hospital at Malegaon and then to Nashik. He was declared dead. The Police Have completed the investigation and filed the charge-sheet.

4. The Appellant applied for bail before the learned Special Judge – Malegaon, however it was rejected on 4th March 2025. The plea taken by the Appellant is the story put up by the First-Informant is not correct story but in fact the deceased also assaulted him with a stick on the same day at same time and there is FIR registered with the same Police Station against the deceased – Shubham and one unknown at C.R. No.327 of 2024 under Section 109 read with 3(5) of BNS. As the sole Accused Shubham has expired, the Police have submitted a summary report to the trial Court.

5. The trial Court has refused to consider the sustained injuries by the Appellant. Instead of that, the trial Court has given more weightage to the injuries received by the deceased and the seriousness of the offence. That is why the prayer for bail was rejected.

6. It is true in this Appeal, the prayer for regular bail is made. As such the bar under Section 18 of the SC & ST Act is not applicable. The Court has to look into the materials collected during the charge-sheet. The provisions of Section 3(1)(r)(s) are not invoked. As the offence under the BNS prescribes a punishment for more than 10 years, that is why they have invoked the provisions of Section 3(2)(v) of the said Act.

7. Both the sides have invited my attention to the papers submitted along with the charge-sheet and also the medical certificates issued for the injuries caused to the Appellant. It can be summarised as follows:-

- (i) The FIR and the supplementary statement of the First-Informant – Shekhar recorded on 3rd September 2024 and 29th October 2024.
- (ii) The statement of witness Anurag Katare and his supplementary statement on 29th October 2024.
- (iii) The statement of one Shreyas More and the supplementary statement on 29th October 2024.
- (iv) The statement of one Chaitanya Devare and the supplementary statement on 29th October 2024.
- (v) The statement of one Bhausaheb Rasal and the supplementary statement dated 29th October 2024.
- (vi) The statement of Dadu Panpatil and the supplementary statement dated 29th October 2024.
- (vii) The statement of Vilas Nanaji Katare and the supplementary statement dated 29th October 2024.
- (viii) The statement of Nutan Pagare and the supplementary statement dated 29th October 2024.
- (ix) The injuries noticed in the post-mortem report performed by the Civil Hospital – Nashik. The incise wound over the chest and cause of death is haemorrhagic shock due to sharp injury.
- (x) The memorandum panchnama by which the Appellant has produced the sickle.

- (xi) The statement of one Vilas alias Pintu Katare. He was accompanied with the deceased while shifting him to Malegaon Civil Hospital. On the way, the deceased has narrated him about the assault on his person.

8. Whereas learned Advocate Shri.Khairnar made following submissions:-

- (a) There is **variance in the manner of assault** narrated by the First-Informant **in the FIR** on one hand and **his supplementary statement** recorded on 3rd September 2024 on the other hand. In the FIR, what he has stated is the assault by the Appellant with the help of a chopper. Whereas in the supplementary statement, what he has stated is the assault by the co-accused Shubham Lad on the person of deceased Shubham Pagare with the help of wooden rod and the deceased snatching that rod and assaulting the co-accused Shubham Lad. In the meantime, the Appellant intervened and due to that the wooden rod hits his head. Furthermore, he has clarified that the Appellant has assaulted the deceased Shubham with the help of chopper and the deceased Shubham snatched the chopper and assaulted the Appellant on his abdomen.
- (b) Mr.Khairnar also relied upon the contents of the FIR lodged by Shubham Thorat who has accompanied the Appellant. This FIR is registered with Manmad Police Station on 5th August 2024 for the offences under Sections 109 and Section 3(5) of BNS. There also he has narrated about the

assault by the deceased – Shubham on the head of the Appellant with the help of wooden rod. At that time, the deceased also assaulted the Appellant with the help of a knife on his left chest. As a result, the Appellant has assaulted the deceased.

(c) He also invited my attention to the **hospitalization of the Appellant** in various hospitals. The details are as follows:-

- (a) 3rd August 2024 : Manmad Civil Hospital.
- (b) 4th August 2024 : Malegaon Civil Hospital.
- (c) 4th August 2024 : Iqra Hospital, Malegaon.
- (d) 4th August 2024 : Om Hospital, Dhule and last
- (e) 15th August 2024 : City Hospital, Malegaon
- (f) 26th August 2024: City Hospital, Malegaon.

He has also produced the necessary medical papers issued by the concerned hospitals. In nutshell, the **nature sustained by Appellant** are as follows:-

- (a) Head injury.
- (b) Multiple fractures in right parietal bone.
- (c) contused lacerated wound and lacerated scalp and CLW over left flank. (These are the separate findings recorded by the above hospitals).

9. Upon these medical certificates, learned Advocate for Respondent No.2 submitted that in fact the Appellant was fit when he

was discharged by the Malegaon Hospital on 15th August 2025. He produced copy of certificate. It is taken on record. He placed reliance on the observations in case of ***Kunhimammed alias Kunheethu V/s. State of Kerala***¹. More specifically, he has read the observations held in paragraph Nos.25.4 to 25.7, 26.1 to 26.6. His submission is, the offence cannot be diluted and it cannot be said that the Appellant assaulted the deceased in the right of private defense. Alternatively, he made a submission that it can be considered before the trial Court when the evidence is recorded. Learned APP has opposed the bail on the ground of involvement which is depicted from various statements of eye witnesses and corroborated by recovery of the weapon and oral dying declaration.

10. From the materials, it can be very well be said that the involvement of the Appellant is disclosed in the commission of the offence. Now the issue is whether the Appellant can take a benefit of the injuries sustained to him and the FIR registered against the deceased. The trial Court Judge has refused to consider the injuries caused to the Appellant (paragraph No.6). One cannot dispute about the seriousness of the offence. It is true when the injuries are caused to

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the Accused, the prosecution needs to explain them. This is not a case wherein there is only FIR against the Appellant but there is also FIR lodged by his colleague against the deceased.

11. This Court is aware that at this stage, it cannot be decided as to who has assaulted and who has assaulted by way of retaliation. It is no doubt true the trial is the appropriate forum. When the Hon'ble Supreme Court is dealing with the bail Applications, along with merits, the Hon'ble Supreme Court also considered unlikelihood of conduct of trial. It is also relevant to note, in serious offence like this, the Court cannot give much weightage to unlikelihood of conduct of trial in near future. The reason is one person has lost his life in the incident. However this Court cannot overlook the fact that even the Appellant has sustained injuries in the assault. There can be a dispute about the necessity of hospitalization by the Appellant in various hospitals but it can be very well be said at this stage that there is an assault from the Appellant on the deceased, also there is an assault on the deceased by the Appellant. This is what is gathered from the Police statements and the FIR lodged against the deceased.

12. This Court is inclined to consider this fact in favour of the Appellant. So this Court cannot decide it just like a case involving the

serious offence like murder. The Court is required to give a weightage to the injuries sustained by the Appellant. If considered from that perspective, this Court feels that further detention of the Appellant is not warranted. The Court is inclined to exercise the discretion in favour of the Appellant and inclined to admit him to bail. Considering the seriousness of the offence, there can be stringent conditions. In view of that, following order is passed:-

ORDER

- (i) **The Appeal is allowed.**
- (ii) The order dated 4th March 2025 passed by the Court of Special Judge, Malegaon in Special (Atrocities) No.186 of 2024 **is set aside.**
- (iii) The Appellant–Dadu @ Vrushant Balasaheb Sudke **be released on bail** on furnishing personal bond and surety bond of Rs.50,000/- (Rupees Fifty Thousand) arrested in connection with **C.R.No.325 of 2024** registered with Manmad Police Station, District : Nashik Rural for the offences under Sections 103(1), 126(2), 351(2), 61(2), 49, 3(5) of BNS and under Sections 3(2), 3(v), 3(2)(va) of SC & ST Act.
- (iv) The Appellant is directed **not to enter the Nashik District till the conclusion of the trial.**
- (v) The Appellant is directed to furnish his alternate address to the Police and to the Court.

- (vi) He is directed not to threaten the prosecution witnesses or to allure them in any manner or to contact them.
 - (vii) The Appellant is permitted to enter the Nashik District **only for the purpose of attending the trial.**
 - (viii) The Appellant is directed to give attendance to the Office of Superintendent of Police–Nashik on **1st Monday of the month of November-2025, February-2026 and August-2026** from 10.00 to 11.00 a.m. **for two (2) years.**
 - (ix) In case of breach of the conditions, liberty to apply for cancellation of bail.
13. With these observations, **the Appeal is disposed of.**
14. Parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]