

(ATROCITY) SPECIAL CASE NO. 7 OF 2019

The State of Maharashtra
Vs
Bhushan Dilip Bachchav and others

ORDER BELOW EXH.10

[1] Accused Nos. (1) Bhushan Dilip Bachchav, (3) Ganesh @ Pappu Manohar Bachchav and (4) Bhushan Daga Bachchav, have filed this application for grant of bail under section 439 of Code of Criminal Procedure.

[2] I have heard both the sides and perused the material placed on record.

[3] From the material placed on the record it can be gathered that the crime vide C.R.No.I 198/2018 was registered under section 324, 323, 504 and 506 r.w.sec. 34 of the Indian Penal Code against three accused persons including deceased accused Jitendra @ Munna Dilip Bachchav. In due course of investigation, the accused persons were arrested and they were produced before the learned Additional C.J.M., Malegaon. Then, they filed their applications for grant of bail. Considering the nature of the offences, learned Addl. C.J.M., Malegaon granted them bail.

[4] Thereafter, the offence under section 3(2)(v)(a) and 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Therefore, considering this

change in circumstances, Shri. Ajit Hagawane, S.D.P.O., the Investigating Officer filed application before learned Addl. C.J.M., Malegaon for cancellation of bail granted to the accused persons. However, the learned Addl. C.J.M., Malegaon rejected the said application by an order dated 29.12.2018. While rejecting the said application, the learned Addl.C.J.M., Malegaon observed that as per section 439(2) of the Code of Criminal Procedure, Magistrate has no power of cancellation of bail. The such powers are vested with the Court of Sessions. So also by placing reliance upon the case law–**Pralhadsingh Bhatti Vs. N.C.P. Delhi–2991(1) R.C.R.(Cri.)377**, he held that considering the addition of offence under sections 3(2)(v)(a) and 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the accused have become disentitled to the liberty granted to them as per the earlier bail order.

[5] However, after rejection of the above application for cancellation of bail, neither the Investigating Officer has challenged the said order before Higher Court nor the accused persons have filed any fresh application for grant of bail after te above changes in circumstances. In the meanwhile, the Investigating Officer has completed the investigation and submitted charge-sheet against the accused persons in this Court. Therefore, the accused persons have filed this fresh application for grant of bail under section 439 of the Code of Criminal Procedure.

[6] Learned Advocate for the accused submitted that already the accused were granted bail by the learned Addl. C.J.M., Malegaon. They have not misused the liberty granted to them by bail. Investigation of the crime is completed and the charge-sheet is filed. Therefore, nothing remained to be discovered or recovered from the accused persons. They are permanent resident of village – Soygaon, Tal. Malegaon, having no criminal antecedents. They are ready to abide all the terms and conditions which will be imposed by this Court. Their presence can be secured by imposing certain term and conditions. Hence, he prayed for grant of bail.

[7] The learned APP, Investigating Officer, Original Informant and the victim of this crime, who is the member of the Scheduled Castes have filed their Written Say and resisted the application.

[8] According to them, nature of the offence is serious. The offences under section 3(2)(v)(a) and 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are non-bailable. In the circumstances, if the accused persons are granted bail, repetition of dispute between the parties cannot be ruled out. On these grounds, they prayed for rejection of the application.

[9] It is part of the record that the accused Nos. 2 to 4 were granted bail by the learned Addl. C.J.M., Malegaon, long back i.e. on 28.11.2017 and accused No.1 was granted bail on

04.12.2018 respectively. It is not the case of the prosecution that the accused have misused the liberty granted to them by bail. Investigation of the crime is completed and the charge-sheet is filed. Therefore, nothing remained to be discovered or recovered from the accused persons. They are permanent resident of village – Soygaon, Tal. Malegaon, having no criminal antecedents. No purpose of the prosecution would be sufficed by keeping the accused persons behind bars. Their presence can be secured by imposing certain term and conditions.

[10] Having regard to the facts and circumstances of the case, it would be just and proper to grant bail to the accused persons. In the result, the application deserves to be allowed. I, therefore, pass the following order. :-

ORDER

[1] Accused Nos.(1) **Bhushan Dilip Bachchav**, (3) **Ganesh @ Pappu Manohar Bachchav** and (4) **Bhushan Daga Bachchav**, be released on their executing P.R. Bond of Rs.15,000/- (Rs. Fifteen Thousand only) **each** with surety of like amount on the conditions that :-

(a) the accused shall not tamper the prosecution evidence, in any manner, and shall cooperate the Investigating Machinery as and when required.

(b) at the time of furnishing bail, they shall produce on record proof of their permanent residence.

(S.B. Bahalkar)

Additional Sessions Judge,
Malegaon.

Date – 15.09.2022.