



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 266 OF 2025

Rajratna Dattatray Shelke

..APPELLANT

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. A.G. Jadhav, Advocate for appellant

Mr. V.J. Jahagirdar, A.P.P. for respondent no.1 – State

Mr. S.R. Mantri, Advocate for respondent no.2

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CORAM : ABHAY J. MANTRI, J.

DATE : 15th APRIL, 2026

ORAL JUDGMENT :

1. The Appellant/informant, being aggrieved by the order dated 14th October, 2024, passed by the learned Additional Sessions Judge / Special Judge, Nanded, granting pre-arrest bail to Respondent Nos. 2 and 3 in Crime No. 401 of 2024, registered with Vimantal Police Station, Dist. Nanded for the offences punishable under Sections 395, 307, 354, 323, 504, 427 and 294 of the Indian Penal Code and under Sections 3(1)(g), 3(2)(va), 3(1)(w)(i), 3(1)(w)(ii), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, the '*SC & ST Act*'), has preferred this Appeal.

2. Heard learned counsel for the Appellant and Respondent Nos. 2 and 3, as well as learned A.P.P. for Respondent No.1 – State at length.

3. The brief facts of the case are as under :-

The Appellant, i.e. informant in Crime No. 401 of 2024, has filed a complaint against Respondent Nos. 2 and 3 for the above-mentioned offences. As a consequence, Respondent Nos. 2 and 3 had moved an application for the grant of pre-arrest bail in connection with the above crime before the learned Additional Sessions Judge /Special Judge, Nanded, who, without calling upon the Appellant or giving him an opportunity of hearing, has granted pre-arrest bail to Respondent Nos. 2 and 3. The Appellant has, therefore, preferred this Appeal.

4. Learned counsel for the Appellant vehemently contended that as per Section 15-A (3) & (5) of the SC & ST Act, no notice of bail proceeding was issued to the Appellant, and thereby no opportunity to be heard was provided to him under sub-section (5) of the SC & ST Act. In fact, he has the right to be heard in any proceeding pending before the Court under the SC & ST Act; therefore, on that ground alone, the Appellant is entitled to the relief for cancellation of bail. To buttress his contention, he placed reliance on the judgment in *Hariram Bhambhi Vs. Satyanarayan and Anr., 2021 SCC OnLine SC 1010* and drew my attention to paragraph nos. 4, 6 and 13 to 25.

5. On the other hand, learned counsel for Respondent Nos. 2 and 3 does not dispute that the original complainant was not a party to the Bail

Application, nor was notice issued to him, nor opportunity of hearing was given to him by the Trial Court.

6. Learned A.P.P. submitted that in paragraph no. 5 of the Affidavit-in-Reply, it is contended that the learned Trial Court had issued notice to the victim/informant; and, without hearing him, bail was granted to Respondent Nos. 2 and 3. However, he failed to point out from the record about the issuance of notice to the informant. Lastly, both submitted that the order passed by the learned Trial Court is just and proper, and no inference is required.

7. On perusal of the record, more particularly Criminal Bail Appeal No. 783 of 2024 filed by Respondent Nos. 2 and 3 before the learned Additional Sessions Judge / Special Judge, Nanded, it reveals that the Applicants therein have not made the complainant/informant a party to the Application. On the said Application, the learned Additional Sessions Judge / Special Judge, Nanded, passed the following order : -

“Call say of I.O. and A.P.P”

The said order itself indicates that the learned Additional Sessions Judge, Nanded, did not issue a notice to the informant as contemplated under Section 15-A(3) of the SC & ST Act, but only called the say of the Investigating Officer and learned A.P.P. Also, the order does not reflect that

the informant was heard by the learned Additional Sessions Judge prior to the passing of the impugned order.

8. Sub-sections (1) to (5) of Section 15-A are extracted below :-

“15-A. Rights of victims and witnesses.—(1) It shall be the duty and responsibility of the State to make arrangements for the protection of victims, their dependents, and witnesses against any kind of intimidation or coercion or inducement or violence or threats of violence.

(2) A victim shall be treated with fairness, respect and dignity and with due regard to any special need that arises because of the victim’s age or gender or educational disadvantage or poverty.

(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 or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of any documents or material, witnesses or examine the persons present.

(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.

9. Bare perusal of the above sub-sections indicates that sub-section (3) of Section 15-A confers a statutory right on the victim or their dependents to reasonable, accurate and timely notice of any Court proceeding, including a bail proceeding. The provisions of sub-section (3), which stipulate the requirement of notice, and of sub-section (5), which confers the right to be heard, must be construed harmoniously. The requirement of issuing a notice facilitates the right to be heard.

10. At this stage, it would be appropriate to reproduce relevant paragraphs Nos. 4, 6, 17, 18, 24, and 25 of the judgment in **Hariram Bhambhi** (supra), as under :-

“4. On 25 September 2019, the first respondent instituted an application 4 before the Special Judge, SC/ST (Atrocities Prevention Cases), Ajmer, for the grant of bail. The application for bail was rejected by the Special Judge by an order dated 25 September 2019. The Special Judge noted that the statements of five witnesses – PW.1 Suresh, PW.2 Smt. Aaram Devi, PW.3 Hari Ram, PW.4 Ramshankar and PW.5 Gokul Singh were recorded, but certain crucial witnesses were yet to be examined. Consequently, the second bail application submitted by the first respondent was rejected. The first respondent instituted an appeal before the High Court against the rejection of a second application for bail. No notice was issued to the appellant under the provisions of Section 15A of the SC/ST Act.

6. The appellant moved the High Court under Section 439(2) of Cr.P.C. for cancellation of bail. In the meantime, another Single Judge of the High Court, by an order dated 29 January 2021, rejected the application for bail filed by three co-accused - Kalu Ram, Kishan Lal and Chaman Lal. The application for cancellation of bail before the High Court was moved principally on the ground that no notice was issued to the appellant under sub-section (3) of Section 15A of the SC/ST Act, resultingly no opportunity to be heard was provided under sub-section (5) of Section 15A. The Single Judge who had admitted the first respondent to bail on 7th November 2019 rejected the application on the ground that since the appellant was being heard in the application for cancelling bail, the requirements of sub-sections (3) and (5) of Section 15A were complied with. The High Court observed:

“So far as compliance of Section 15A (3)(5) of SC/ST is concerned, this Court today heard counsel for the complainant-petitioner again on merits, therefore, requirement of issuing notice to the complainant-petitioner (victim) as provided under Section 15A (3)(5) of the SC/ST Act is being complied with. The order dated 07.11.2019 was passed by this Court after considering the statement of PW-2, Smt. Aaram Devi, wife of the deceased, therefore, I see no reason for recalling of the order dated 07.11.2019. As such, this criminal miscellaneous bail cancellation application is hereby dismissed.”

17. The Gujarat High Court in Hemal Ashwin Jain v. Union of India observed that:
“37. The victims, even today, have no semblance of rights at the investigation stage and a feeble position at the trial stage of a criminal prosecution.

.....

53. We are also not impressed by the argument of Mr.Popat that Section 15A(3) of the Amendment Act should be construed as directory and not mandatory. As is evident from a plain reading of the section quoted above, the victim must be served with notice of the bail application and must be provided an opportunity to be heard and advance argument. When a statute specifically provides a right to the victim/dependent to be heard at any proceedings in respect of bail, and if the court fails to provide such opportunity, then there is an inherent failure of justice. This procedure, in our opinion, cannot be bypassed. The non-compliance of the provision of Section 15A(3) of the Amendment Act would render an order null and void. If Section 15A(3) of the Amendment Act is to be construed as directory, then the very object and purpose with which such provision is enacted would get frustrated.”

61. In such circumstances referred to above, we hold that Section 15A(3) of the Amendment Act is mandatory and not directory”

(emphasis supplied).

18. The finding of the Gujarat High Court that the requirement of issuing notice of a court proceeding to a victim or a dependent under Section 15A (3), in order to provide them an opportunity of being heard, is mandatory, finds echo in multiple High Court decisions 13 including a decision of the Rajasthan High Court 14. We find ourselves in agreement with the proposition and hold that sub-sections (3) and (5) of Section 15A are mandatory in nature.

24. 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.

25. 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 16 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.”

11. Thus, it is apparent that the Hon’ble Supreme Court after considering the judgment in Hemal Ashwin Jain v. Union of India, has categorically held that *“the findings recorded by the Gujarat High Court that the requirement of issuing notice of a Court proceeding to a victim or a dependent under Section 15-A(3) in order to provide them an opportunity of being heard, is mandatory, finds echo in multiple High Court decisions, including a decision of the Rajasthan High Court.”* ***Therefore, the Hon’ble Supreme Court was in agreement with the proposition laid down by the Gujarat High Court and other High Courts and held that sub-sections (3) and (5) of Section 15-A of the SC & ST Act are mandatory in nature.***

12. Undisputedly, in the case at hand, the victim/informant was not a party to the bail application, nor was notice issued to him; thereby, no opportunity to be heard was provided to him under sub-section (5) of the SC & ST Act before passing the order on the bail application. As a consequence, it seems that the learned Additional Sessions Judge/Special Judge, Nanded, failed to comply with the mandate laid down in Section 15-A (3)(5) of the SC & ST Act and, without following it, granted bail.

13. Having considered the above facts and law laid down by the Hon'ble Supreme Court, in my view, the order passed by learned Additional Sessions Judge/Special Judge, Nanded needs to be set aside, as no opportunity was given to the victim/informant prior to passing of the order.

14. At this stage, learned counsel for Respondent Nos. 2 and 3 submits that the charge-sheet is already filed in the Trial Court and Respondent Nos. 2 and 3 are ready to file a fresh Application before the learned Additional Sessions Judge within a week. Therefore, he urged for the grant of protection as per impugned order for further period of two weeks. Prima facie, I find substance in his submission for the grant of protection to Respondent Nos. 2 and 3.

15. As a result, **the Appeal is allowed.** Accordingly, the impugned order dated 14th October, 2024, passed by the learned Additional Sessions Judge / Special Judge, Nanded, granting bail to Respondent Nos. 2 and 3 in Crime No. 401 of 2024 registered with Vimantal Police Station, Dist. Nanded for the offences punishable under Sections 395, 307, 354, 323, 504, 427 and 294 of the Indian Penal Code and under Sections 3(1)(g), 3(2)(va), 3(1)(w) (i), 3(1)(w)(ii), 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby quashed and set aside.

16. Protection granted to Respondent Nos. 2 and 3 vide order dated 14th October, 2024, shall continue till **30th April, 2026**.

17. Needless to clarify that if Respondent Nos. 2 and 3 file any application for the grant of bail, then the learned Additional Sessions Judge / Special Judge shall hear the victim/informant prior to passing any order on the said application.

18. The rule is made absolute. No order as to cost.

(ABHAY J. MANTRI, J.)

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