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**(2022) 09 BOM CK 0024**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 481 Of 2022**

Nitin Vijay Palhade

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

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**Date of Decision :** 08-09-2022

**Acts Referred:**

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r), 3(1)(s), 3(1)(va), 14A  
Code Of Criminal Procedure, 1973 — Section 439  
Indian Penal Code, 1860 — Section 34, 323, 324

**Citation :** (2022) 09 BOM CK 0024

**Hon'ble Judges :** G. A. Sanap, J

**Bench :** Single Bench

**Advocate :** M.N. Ali, A.M. Kadukar

**Final Decision :** Disposed Of

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## Judgement

G. A. Sanap, J

1. In this appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ( for short "Atrocities Act") challenge is to the order dated 08/07/2022 passed by learned Special Judge, Khamgaon District Buldhana, whereby the learned Judge was pleased to reject the application for bail made by the appellant under Section 439 of the Code of Criminal Procedure.

2. The appellant was arrested on 24.06.2022 in crime bearing No.228/2022 registered at Police Station Shegaon City for the offence punishable under Sections 323, 324 read with Section 34 of the Indian Penal code and Sections 3(1)(r), 3(1) (s), 3(1)(va) of the SC/ST (Prevention of Atrocities) Act.

3. The FIR was lodged on 26.05.2022 in respect of the incident occurred on 25.05.2022 at about 8.45 against the appellant and remaining two accused persons. It is stated that investigation in the crime has been completed. The

charge-sheet has been filed. The detention of the appellant is not necessary for custodial interrogation. The completion of trial may take its own time. The detention is, therefore, unwarranted and unnecessary. It is stated that learned Special Judge has rejected his application for bail on flimsy grounds.

4. The State has opposed the appeal. It is contended that remaining two accused are absconding. The crime committed is serious. The possibility of tampering with the prosecution evidence cannot be ruled out. The appellant cannot be enlarged on bail.

5. I have heard learned Advocate for the appellant and learned APP for the State.

6. The notice was duly served to the respondent No.2 on 24. 08.2022 by police and she was directed by the said notice to appear before this Court on or before 29.08.2022. Respondent No.2 has not appeared before the Court despite service.

7. On going through the record, it is seen that police did not ask for police custody of the appellant on his arrest. The police as can be seen from the record straightaway made a request to learned Judge to remand the appellant in judicial custody. This fact would indicate that on the very first date of his production before the learned Special Judge the necessity of police custody of the appellant for the custodial interrogation was not put-forth. In my view, while deciding the bail application, the learned Special Judge ought to have taken this fact into consideration. It is seen that this fact has not been taken into consideration.

8. The perusal of the impugned order would show that learned Special Judge got carried away by the fact that remaining two accused persons were absconding. He got also carried away by the submission made by the prosecution that crime in question is a very serious crime. In my view on both counts learned Judge was not right. Learned Judge ought to have taken into consideration the important aspect of the need and necessity of the detention of the appellant in the crime for the specific purpose and more particularly for the purpose of custodial interrogation. The appellant was arrested on 24. 06.2022. He has been in jail till date. The charge-sheet has been filed. The apprehension raised by the prosecution with regard to the tampering with the prosecution evidence could have been appropriately dealt with by imposing the appropriate conditions. In the fact and circumstances, I am of the view that this is a fit case to enlarge the appellant on bail. It is further pertinent to mention that while deciding the bail application the merits of the case cannot be gone into, to arrive at any conclusion as to the fate of the case of the prosecution, one way or the other. If such exercise is undertaken, the possibility of prejudice to either of the parties cannot be ruled out. In the facts and circumstances, I am of the view that this appeal deserves to be allowed. Hence the following order.

9. The appeal is allowed. The impugned order dated 08/07/2022 rejecting the bail application is quashed and set aside. The prayer made by the appellant to release him on bail is allowed. The appellant/accused be released on his furnishing P.R. bond in the sum of Rs.25,000/- with one surety in the like amount.

10. During the pendency of trial, the appellant shall not tamper with the prosecution evidence. The appellant shall not pressurize or threaten the prosecution witnesses. He shall be released forthwith, if he is not required in any other crime on his furnishing bail.

11. The Criminal Appeal stands disposed of.