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**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 21ST DAY OF JULY, 2020

BEFORE

THE HON'BLE MR.JUSTICE HANCHATE SANJEEVKUMAR

CRIMINAL PETITION NO.200315/2020

C/W

CRIMINAL PETITION NO.200318/2020

In Crl.P.No.200315/2020:

Between:

Marena @ Mareppa
S/o Mallappa Meti @ Pujari,
Age 58 years, Occ. Agriculture,
R/o Village Ibrahimpur,
Tq. Shahapur, Dist. Yadagiri.

... Petitioner

(By Sri Nandkishore Boob, Advocate)

And:

The State through
Shahapur Police Station,
Now represented by
Additional State Public Prosecutor,
High Court of Karnataka,
Kalaburagi.

... Respondent

(By Sri Mallikarjun Sahukar, HCGP)

This Criminal Petition is filed under Section 439 of Code of Criminal Procedure, 1973 praying to release the petitioner on bail in Crime No.72/2020 of Shahapur Police Station for the offences punishable under Sections 143, 147, 148, 323, 307, 504 and 506 read with Section 149 of IPC and Sections 3(1)(r), 3(1)(s) of SC/ST Act, 1989 pending on the file of District and Sessions Judge, Yadagiri.

In CrI.P.No.200318/2020:

Between:

Sahebreddy @ Sabreddy
S/o Mareanna Meti @ Pujari,
Age 23 years, Occ. Agriculture,
Ro Ibrahimpur Village,
Tq. Shahapur, Dist.Yadgiri.

... Petitioner

(By Sri Rajesh Doddamani, Advocate)

And:

1. The State of Karnataka through
Shahapur Police Station
Now represented by
The Additional State Public Prosecutor,
High Court of Karnataka,
Kalaburagi Bench.
2. Smt.Tarabai W/o Chandru Nayak
Age 40 years, Occ. Farmer,
R/o Ibrahimpur Tanda,
Tq. Shahapur, Dist. Yadgir.

(R2 impleaded Vide Order Dtd. 16.06.2020)

... Respondents

(By Sri Mallikarjun Sahukar, HCGP for R1;
Notice to R2 Served)

This Criminal Petition is filed under Section 439 of Code of Criminal Procedure praying to allow this petition and release the petitioner/accused No.1 on bail in connection with Crime No.72/2020 of Shahapur Police Station registered for the offences punishable under Sections 143, 147, 148, 323, 307, 504 and 506 read with Section 149 of IPC and Sections 3(1)(r), 3(1)(s) of SC/ST (Prevention of Atrocities) Act, 1989 now pending on the file of Addl. Sessions Judge at Yadgiri.

These petitions having been heard and reserved for orders on 14.07.2020, coming on for “**Pronouncement of Order**” this day, the Court made the following;

COMMON ORDER
(Through Virtual Court)

CrI.P.No.200315/2020 is filed by the petitioner / accused No.2 under Section 439 of Cr.P.C and CrI.P.No.200318/2020 is filed by the petitioner / accused No.1 under Section 439 of Cr.P.C., seeking to enlarge them on bail.

2. Since both the petitions arising out of same Crime i.e., in Crime No.72/2020 of Shahapur P.S., they are taken up together, heard and disposed of by this common order.

3. In nutshell, prosecution's case as per FIS is as under;

It is stated by the first informant, Smt. Tarabai, who is the mother of the injured (minor son) of 14 years old that she is having two female and two male children, among them, the injured was studying in 8th Standard when the alleged incident (now going to be stated) was occurred. It is alleged that on 28.02.2020, the first informant and his elder son namely, Santosh had been to Ukkanal Thanda and at 4.30 p.m., her husband had called her through phone stating that the petitioners and other accused have assaulted their son and therefore they were going to admit him to the hospital and further told the first informant to come to Shahapur, accordingly at 5.00 p.m., the first informant and her son went to Govt. Hospital, Shahapur, wherein they saw the injured-Anand, who had sustained grievous injuries on the head and was not in a position to talk, upon enquiry with her husband, who told that

their son-Anand after coming from school had taken Ox for grazing and returned to the house at 4.00 p.m. At that time, the petitioners herein came to their house, abused him in filthy language saying that why the Ox was left to graze in his (accused No.1's) field and taken the injured to their field, wherein the petitioners have shown the place of grazing and immediately petitioner / accused No.1-Sahebreddy picked up an Axe and assaulted on the head of the minor injured and the petitioner/accused No.2-Mareppa had kicked the injured and other accused have instigated both accused Nos.1 and 2 to finish him and also abused with reference to the caste, knowing fully well the caste of the injured and the first informant. Thus, in this way the petitioners and other accused have attempted to commit the murder of the injured by assaulting on the head with Axe. Therefore, with these allegations, a case in Crime No.72/2020, came to be registered against the petitioners and other accused for the offences

punishable under Sections 143, 147, 148, 323, 307, 504 and 506 read with Section 149 of IPC and Sections 3(1)(r), 3(1)(s) of Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act, 1989 ('SC/ST Act', for brevity).

4. The learned counsel for the petitioner in CrI.P.No.200318/2020 had impleaded-Smt. Tarabai, the first informant as respondent No.2 as she is also victim as her son had sustained injuries.

5. The learned counsel for the petitioner in CrI.P.No.200315/2020 had not made the first informant as a party instead submitted that it would suffice if an information is given to the victim or his dependents or the first informant about the proceedings pending before the Court as per Sub-section (3) of Section 15-A of the SC/ST Act. This aspect of the matter is elaborately discussed in the light of the applicable provisions of law hereunder.

6. The learned counsel for the petitioner in CrI.P.No.200315/2020 had submitted that the petitioner-Mareppa had not picked up any weapon to assault the minor injured and as against him the overtact alleged is only that he has kicked the injured and abused him in filthy language. Therefore, submitted that there is no element of sharing of common intention between the petitioners and other accused and therefore prayed to release the petitioner on bail. Further submitted that this incident was occurred suddenly in a spur of moment and this petitioner had not used any weapon and further the petitioner is in custody since 23.04.2020 and he is an old age person of 58 years. Further, submitted that there is a delay in lodging the first information statement before the Police which goes to the core of the prosecution case that the petitioners and other accused have been falsely implicated into the case and as such narrated the dates of incident. Even though it is alleged

that on 28.02.2020 the incident was occurred, but the FIS came to be lodged on 06.03.2020 and accordingly FIR came to be registered on 06.03.2020. Therefore, there is delay in registration of FIR and which creates suspiciousness in the prosecution case. Hence, prayed to release the petitioner on bail and the petitioner would abide by any conditions to be imposed by this court while granting bail.

7. Further, learned counsel for the petitioner-Sahebreddy in CrI.P.No.200318/2020 submitted on the line of the counsel for the petitioner in CrI.P.No.200315/2020 besides further submitting that there is a delay in lodging FIS and therefore the petitioner and other accused have been falsely implicated into the case even though there is no incident has been occurred. Further argued that the injured had sustained injuries on the head on some other occasion, but by taking disadvantage of this fact

of sustaining injury, the mother of the injured has lodged a false complaint before the Police. Further submitted that the petitioner did not have any intention to assault or kill the injured, but when there is verbal altercation took place and suddenly such an incident was happened in a heated moment and in a sudden spur of moment, therefore offence under Section 307 of IPC is not attracted and at the most the offence under Section 324 of IPC may be attracted. Hence, prayed to release the petitioner on bail and the petitioner would abide by any conditions to be imposed by this court while granting bail.

8. On the other hand, the learned High Court Government Pleader vehemently contended that the petitioners in both the petitions have assaulted the minor injured of 14 years old by sharing common intention between them and assaulted with Axe on the head of the minor boy and in this way attempted to kill

the minor injured, who is son of the first informant herein. Further, submitted that the petitioners are highly influential persons and if they are released on bail, then there would be chances of threatening the first informant / injured and their family members and in such an event, a fair trial would not be possible. Therefore, considering the gravity of the offence alleged, learned HCCP requested to dismiss the petitions.

9. By considering the overall facts and circumstance as depicted by the prosecution case, it is the case of the prosecution that the petitioner in Crl.P.No.200318/2020 has assaulted on the head of the minor boy with Axe for which the petitioner-Mareppa and other accused have abetted to kill the injured person. Upon considering the FIS and other materials at this stage, which are made available before this court that there is a prima facie element of sharing common intention between them in furtherance of commission of

offence alleged. At this stage, it cannot be accepted the submission made by the learned counsel that there was no pre-meditation and sharing of common intention between the petitioners and the other accused and in a sudden spur of moment the incident has occurred. Whether the petitioner and other accused have shared common intention or not in furtherance of commission of offence alleged, it may be elicited during the full-fledged trial but not at this stage. But it is a fact as per the prosecution papers reveals the injured after coming to the house had taken Ox to the field for grazing then returned to the house from School and tied the Ox, then these petitioners have come to the house of the injured and abused him in filthy language and asked why he made the Ox to graze in their field and taken the injured person to their field therein the petitioner-Sahebreddy took up an Axe and assaulted on the head and for which the petitioner-Mareappa and other accused have instigated the petitioner-Sahebreddy. Upon considering

all these *prima facie* materials, it shows a deadly weapon like, Axe was used to assault on the head of the minor boy. In the present case, the injured is 14 years old boy and the petitioners and other accused did not bother about his tender age and assaulted on his head, which is a vital part of the body. If the petitioners had been successful in their attempt by using deadly weapon viz., Axe assaulted on the head, then there would be chances of death of the minor boy. Therefore, *prima facie* it attracts the offence under Section 307 of IPC, for which maximum punishment to be imposed is upto imprisonment for life. Further, the prosecution papers *prima facie* reveals that the first informant and injured are belonging to Scheduled Caste and knowing fully well the caste of the first informant and injured had abused in filthy language by mentioning the name of their caste as it can be seen in the FIS and therefore when offence under Section 307 of IPC is foisted for which the maximum punishment is for life

imprisonment and the offence under 3(2)(v) of the SC/ST Act attracts for which the punishment imposed is for life. Therefore, upon perusing the materials available at this stage prima facie it revealed that the petitioners and other accused have committed the offence alleged and have abused the injured and the brother of the injured with reference to their caste and also criminally intimidated them. The offences foisted are attracted prima facie as against the petitioners herein. Therefore, considering the gravity of offence alleged as it reveals from the prosecution papers and if the petitioners were successful in their attempt, then the death of the injured person would have been caused. Thus, considering the gravity of the offence alleged and also the severity of the punishment to be imposed, this court is of the opinion not to release the petitioners on bail for the reason that if they are released on bail then there would be chances of threatening the injured, his parents and also tampering

the evidences and also chances of absconding and fleeing away from justice.

10. Further upon considering the delay in lodging FIS and registration of crime, it is seen from the records that even though the alleged incident said to have been occurred on 28.02.2020, FIS was lodged on 06.03.2020, the delay in this regard may not always go to the roct of the prosecution case so as to say that the prosecution case falls on the ground. There may be various factors in belated lodgng of FIS, but this aspect of the delay can be considered during full-fledged trial but not at this stage. While considering the bail petition, without going to the merits on the case, but considering prima facie case, gravity of the offence alleged, chances of threatening the witnesses and tampering the evidences and whether release of the petitioners on bail meddles with the investigation process, these are all aspects to be considered while

considering the bail petition. Therefore, just because there is a delay that cannot be made a ground to allow the petitions since it is a pure question to be considered on facts during the full-fledged trial, but not at this stage.

11. Therefore, under these circumstances, this court is of the opinion that the petitioners are not entitled for enlarging them on bail. Thus, the petitions filed by the petitioners are liable to be rejected. Accordingly, they are **rejected**.

12. As discussed in the preceding paragraphs, the learned counsel for the petitioner-Mareppa in Cr1.P.No.200315/2020 is having some reserve in impleading the first informant as respondent herein and submitted that they are not entitled to participate in the proceedings, therefore in this regard the legal provisions as enumerated under the Act require to be discussed

herein as the rights of the Members of the Scheduled Caste and Scheduled Tribes are involved.

13. Sub-section (3) of Section 15-A of the SC/ST Act is extracted as under;

“ 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.

14. The parliament by way of Amendment to the Act had inserted Chapter IV-A by the Act 1 of 2016 w.e.f. 26.01.2016 and through which rights are conferred on the victim and the witnesses. Section 15-A of the SC/ST Act enumerates the right of the victim and witnesses. Sub-section (3) of Section 15-A of the SC/ST Act confers right on the victim or his dependents that they have 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 the SC/ST Act, with the object and reason let them know about their case in the court proceedings when a proceedings is initiated or pending including the bail proceedings. Correspondingly, a duty is conferred on the Special Public Prosecutor or the State Government to inform the same to the victim or his/ her dependent.

15. Section 2 (ec) of the SC/ST Act defines 'victim', as under;

“ “victim” means any individual who falls within the definition of the “Scheduled Castes and Scheduled Tribes” under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;”

16. Therefore, the definition “victim” as enumerated in the Act is wide enough, which include any individuals who falls within the definition of the SC/ST Act who has suffered or experienced physically, mentally, psychologically, emotionally or monetary harm or suffered harm to his or her property. If a person sustains injuries arising out of crime then, he himself, his parents, family members are also to be considered as victim as per the above definition. It is not only stipulated a physical harm is to be caused but if there is a harm mentally, psychologically, emotionally or monetarily or if there is any harm in respect of the property then such person is also coming within the definition of the victim.

17. In the present case, the first informant is the mother of the injured person. Therefore, definitely the first informant is victim in the present case. It is not only the mother alone is becoming the victim but father

and other blood relative are also coming within the definition of victim to consider the present case. The first informant is the mother of the minor boy, the minor boy who had sustained injuries due to the assault stated to have been committed by the petitioners and other accused. Therefore, certain rights are conferred to the victim and witnesses under the SC/ST Act.

18. Sub-section (5) of Section 15-A of the SC/ST Act guarantees a right to a victim or dependents to participate in any proceedings thus right of '*Audi Alterm Partem*' is conferred. For ready reference, Sub-section (5) of Section 15-A of the SC/ST Act is extracted as under;

“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.”

19. Therefore, where a right of *Audi Alterm Partem* is conferred on the victim or his dependents, then the court has to give an opportunity/right of audience to the victim or his/her dependent to hear them as to enable them to participate in the proceedings including bail proceedings also. Therefore, a victim or dependent has a right to be heard by the Court enabling the victim or dependents to participate in any proceedings in respect of not only bail proceedings but also in the proceedings of discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing of a case. The court is able to hear the victim or dependent in respect of a proceedings as enumerated in Sub-section (5) of Section 15-A of the SC/ST Act only when the victim or dependent are made as parties in the proceedings, otherwise it cannot be possible for the court to hear the

victim/dependents and to receive any written submission as stated in the said provision. The victim or dependent may participate either personally or through an Advocate or through Public Prosecutor or Special Public Prosecutor or appear himself / herself. As per Section 15 of the SC/ST Act, the Special Public Prosecutor or exclusive Special Public Prosecutor are assigned the duties to represent the State *in genere* but *in specie* on behalf of the victim or dependent/complainant/first informant to prosecute the case. But the parliament in its wisdom by inserting Chapter IV-A and Section 15-A of the SC/ST Act confers right of victims and witnesses and more expressly provided the victim or dependent to participate in any proceedings. Therefore, Sub-section (3) of Section 15-A of the SC/ST Act only enumerates giving such information to the victim or dependents through Special Public Prosecutor or State Government about any proceedings pending in the court. But Sub-section (5)

of Section 15-A of the SC/ST Act confers a right on the victim or dependents to make them to participate in a proceedings and to hear their submissions and also to file written submissions in this regard in the proceedings pending before the court. Therefore, unless the victim or dependent as enumerated in Section 2(ec) of the SC/ST Act is made a party in the proceedings in the case pending before any court, it is not possible for the court to hear whatever submission to be put forth by the victim or dependents in the proceedings before the court. Therefore, under these circumstances, making the victim or dependent as party in the proceedings pending before any court is necessary and mandatory.

20. There are various rights conferred on the victim or dependent and correspondingly there are various duties conferred on the State Government, Special Courts and on the Public Prosecutor / Special

Public Prosecutors and also on Station House Officers of the Police Stations.

21. Sub-Section 12 of Section 15-A of the SC/ST Act confers right on the atrocity victim or dependents to take assistance from the Non-Government Organizations, Social Workers or Advocates. Therefore, a right is conferred on the victim arising out of atrocity or their dependents to take legal assistance from an Advocate apart from any assistance to be taken by the Non-Government Organizations and Social Workers. Therefore, it is the duty of the State to provide legal assistance to the atrocity victims or their dependents by engaging services of an advocate in any proceedings initiated under the Act.

22. At this stage, it is pertinent to look into the relevant provisions of the Legal Services Authorities Act, 1987 ('LSA Act', for brevity). Clause (c) of Section 2 of

the LSA Act defines “legal service” which reads as under;

“legal service” includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter”

23. Section 12 of the LSA Act defines as follows;

“12. Criteria for giving legal services.- Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is-

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) xxxxxxxxxxxx

(c) xxxxxxxxxxxx

(d) xxxxxxxxxxxx

(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(emphasis supplied by me)

(f) xxxxxxxxxxxx

(g) xxxxxxxxxxxx

(h) xxxxxxxxxxxx

24. Section 13 of the LSA Act defines as follows;

“13. Entitlement to legal services.-(1) Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a *prima facie* case to prosecute or to defend.

(2)xxxxxxxxx”

25. Therefore, the member of Scheduled Caste and Scheduled Tribes is entitled for free legal services. Legal services means it is not only a legal counseling but also providing assistance of an Advocate to the Member of the Scheduled Caste and Scheduled Tribes in any proceedings pending before the court. Therefore, upon considering all these legal provisions, a member of the Scheduled Caste and Scheduled Tribes are entitled free legal services and when it is appreciated with the legal provision as enumerated in Section 15-A of the SC/ST Act and as per Section 12 of the LSA Act, as discussed above, a victim or dependent as stated in

Clause (ec) of the SC/ST Act are also entitled to free legal services to participate in any proceedings pending before the Court as stipulated in Chapter IV-A of the SC/ST Act. Therefore, it is the duty cast on the Karnataka State Legal Services Authority and High Court Legal Services Committee to provide legal services to the victim or their dependents through District Legal Services Authority (DLSA) in each District before the Special Court and before the High Court respectively.

26. There is no distinction in providing legal services at the trial stage and at the appellate stage. This pronouncement is declared by the Hon'ble Supreme Court in the case of ***Rajoo alias Ramakant Vs. State of Madhya Pradesh [(2012) 8 SCC 553]***. Therefore, in any proceedings pending before the court a member of Scheduled Castes and Scheduled Tribes are entitled legal services. In the cases/proceedings arising out of SC/ST Act, the victim or dependents are entitled

for legal services as per Section 12 of the LSA Act and also as per Section 15-A of the SC/ST Act.

27. Therefore, under these circumstances, the following guidelines are issued;

- i) A right is conferred on the victim or his/her dependents to participate in the proceedings initiated under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as enumerated in Section 15-A, as discussed above. Therefore, the first informant/complainant/victim or dependents shall be made as a party in the proceedings and issue necessary notice to the victim or dependents / first informant/complainant/ victim or dependents and to hear them in any proceedings as envisaged under Sub-section (5) of Section 15-A of the SC/ST Act.
- ii) The Special Courts trying with the offence/s under the Scheduled Castes

and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall direct the District Legal Services Authority to provide an advocate on behalf of the victim or his/her dependents/ first informant/complainant from the Panel Advocates of District Legal Services Authority.

The Registrar General is hereby requested to circulate this order to all the concerned Special Courts trying/dealing the offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and to the Member Secretary, Karnataka State Legal Services Authority (KSLSA), who in turn shall inform all the District Legal Services Authority and Secretary, High Court Legal Services Committee (HCLSC) to provide legal services to the victim or dependents in any proceedings pending before the Special Court or High Court, as the case may be, as stated above.

**Sd/-
JUDGE**

BL