

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.920 OF 2022

1. Sahebrao Punjaji Sonwane
Age: 70 years, Occu.: Agri.,
2. Shankar Narhari Gawand
Age: 62 years, Occu.: Agri.,
Both R/o. Manjur, Tq. Kopargaon,
Dist. Ahmednagar .. Applicants

Versus

1. The State of Maharashtra
Through Kopargaon Police Station,
Ahmednagar
2. Shobha Namdev Sonavane
Age: Major, Occu.: Agri.,
R/o. Manjur, Tq. Kopargaon,
Dist. Ahmednagar .. Respondent

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Mr. Shailesh S. Chapalgaonkar, Advocate for appellants.
Mr. R. D. Sanap, APP for respondent No.1 - State.
Mr. A. D. Sonkawade, Advocate for respondent No.2.
Ms. Ahwini Lomte, Advocate for respondent No.2 (Appointed).

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : JANUARY 05, 2023.

JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]

. **Admit.**

2. Present appeal has been filed under Section 14(A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") to challenge the

order of rejection of bail applications by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Kopargaon, Dist. Ahmednagar in Bail Application No.325 of 2022 and 327 of 2022 on 22.11.2022. Those applications were filed under Section 439 of the Code of Criminal Procedure. The appellants were arrayed as accused persons in Crime No.322 of 2022 registered with Kopargaon Taluka Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 354, 294, 326, 324, 323, 504, 506, 509, 143, 144, 147, 148, 149, 427 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(5), 3(2)(v-a), 3(1)(w), 3(1)(g) of the Atrocities Act.

3. Heard learned Advocate Mr. Shailesh S. Chapalgaonkar for the appellants and learned APP Mr. R. D. Sanap for respondent No.1 - State. Though respondent No.2 was served, but failed to appear. Therefore, learned Advocate Ms. Ahwini Lomte was appointed to represent the cause of respondent No.2, however, thereafter learned Advocate Mr. A. D. Sonkawade has caused his appearance for respondent No.2. Under such circumstance, they both have been heard for respondent No.2.

4. The FIR has been lodged by present respondent No.2, who has stated that she and her family belong to Hindu Mahadeo Koli caste, which is a Scheduled Caste. She was residing with her husband and daughter. Her husband and daughter went around 9.00 a.m. on 19.08.2022 to drop the daughter to school. Around 10.00 a.m., the

brother-in-law of the informant told her that he has received phone call from one Sainath Bacchav that the husband of the informant i.e. Namdeo is being beaten by the accused persons including the present applicants. The place was said to be in front of grocery shop of one Tilekar. It was also informed that Namdeo was assaulted by sticks and iron rods. Informant and her brother-in-law Sunil along with Sunil's wife Usha went in front of shop of Tilekar. They saw the accused persons assaulting Namdeo with iron rod and sticks. They tried to intervene, however, they had also received injuries. They were abused in the name of caste. Accused had threatened them to kill. As a result of the assault, Namdeo expired and the FIR that was lodged by respondent No.2 came to be registered for the above-said various offences.

5. Learned Advocate for the appellants submitted that the appellants came to be arrested on 20.08.2022 and since then they are in jail. Now, the investigation is complete and charge-sheet is filed. They had, therefore, prayed for releasing them on regular bail, however, the said application has been rejected. Hence, this appeal.

6. Learned Advocate for the appellants further submitted that perusal of the FIR as well as charge-sheet would show that the role attributed to the appellants is assault by axe and sticks respectively. In fact, appellant No.1 is 70 years old person, whereas appellant No.2 is 62 years of age. It is hard to believe that they would have assaulted

the deceased and other persons. The entire family has been roped. The appellants are ready to abide by the terms of the bail.

7. Per contra, the learned APP as well as both the Advocates representing respondent No.2 have vehemently submitted that perusal of the FIR as well as the entire charge-sheet would show that specific role is attributed to the appellants. Age will not be the criteria. Namdeo was attacked by six persons having deadly weapons. The postmortem report would show that he had sustained eight surface wounds. There were corresponding internal injuries and the probable cause of death that has been given is "combined effect of septicaemia with cerebral damage due to blunt trauma to head with polytrauma." The statement of witnesses under Section 164 of the Code of Criminal Procedure would also reveal specific act of the applicants. It can be seen that since last many years the civil dispute is going on in respect of the way to the land and if the appellants are released on bail, they would tamper with the evidence of the prosecution and it would be life threatening to the witnesses also.

8. Perusal of the FIR would show that the appellants have their lands adjacent to the land of the deceased and it is said that there is long standing dispute in respect of way to the land. This Court has granted stay to the matter and, therefore, the dispute aggravated. The informant contends that her husband - Namdeo left along with

daughter for dropping her to school around 9.00 a.m. and around 10.00 a.m., her brother-in-law informed about the fact that six persons were assaulting Namdeo in front of Tilekar's shop. Informant, her brother-in-law and wife of brother-in-law went to the spot. The statement of these three persons corroborate each other, however, it is to be noted from all the statements of all the three witnesses that the alleged act imputing offence under the Atrocities Act appears to be against co-accused Ganesh, Samadhan and Ravindra. It is stated that by doing obscene act, they had abused the informant in the name of caste. As regards the abuses in the name of caste is concerned, role of each accused will have to be considered and it is not stated in the FIR as well as the statement of the witnesses under Section 161 of the Code of Criminal Procedure that any abuse was given by the present applicants. The informant, her brother-in-law, brother-in-law's wife - Usha and the other eye witnesses have stated that appellant No.1 was holding axe and appellant No.2 was holding stick and they had assaulted Namdeo as well as appellant No.2 appears to have assaulted Usha with the stick. Unfortunately, Namdeo has expired, but the fact that is required to be considered is that the incident is stated to have taken place on 19.08.2022 and Namdeo expired on 24.08.2022. The postmortem reveals eight injuries of following nature :-

- 1) Bluish contused abrasion of size 6cm x 4cm was present over right side of upper arm.

- 2) Lacerated wound was present over right hand thumb with dressing.
- 3) Multiple sutured wounds was present over right side of leg with discharging fluid.
- 4) Bluish contused lacerated wounds of size 4cm x 3cm to 2cm x 1cm was present over left side of leg.
- 5) Bluish/Blackish contusion of size 6cm x 4 cm was present over left side of arm with fracture of underlying bone.
- 6) Bluish contusion of size 12 cm x 4 cm was present over left side of lumber region.
- 7) Multiple bluish contusion was present over back of trunk.
- 8) Contusion was present over left side of parietal region of scalp with effusion of blood."

The probable cause of death as aforesaid appears to be combined effect of septicaemia with cerebral damage due to blunt trauma to head with polytrauma. Whose weapon caused head injury to Namdeo cannot be ascertained, as there is no such specific statement either in the FIR or in statements of the witnesses under Section 161 of the Code of Criminal Procedure. Taking into consideration the septicaemia, which would have developed later to the bruises, it will have to be considered by the trial Court, as to whether there was intention and knowledge to kill Namdeo.

9. The investigation is over and charge-sheet is filed. The weapons have been recovered. As regards the weapons allegedly used by the appellants are concerned, the discovery is by co-accused Yogesh. With such kind of evidence, taking into consideration the age of the

appellants, they need not be asked to remain in jail, as it will be long way to stand their trial. Case is made out for grant of bail to the appellants, however, at the same time balance will have to be struck taking into consideration the fact that the field is adjacent and they are resident of the same village. Necessary restrictions are required to be imposed on the appellants. Learned Special Judge ought to have considered all these aspects when regular bail was prayed.

10. For the above-said reasons, following order is passed :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the Atrocities Act/Additional Sessions Judge, Kopergaon in Bail Application Nos.325 of 2022 and 327 of 2022 dated 22.11.2022 stands set aside. The applications stand allowed.
- iii) Appellant No.1 - Sahebrao Punjaji Sonwane and Appellant No.2 - Shankar Narhari Gawand, who have been arrested in connection with Crime No.322 of 2022 registered with Kopergaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 354, 294, 326, 324, 323, 504, 506, 509, 143, 144, 147, 148, 149, 427 of Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(2)(5), 3(2)(v-a), 3(1)(w), 3(1)(g) of the Atrocities Act, be released on P.R. Bond of Rs.50,000/- with two solvent

sureties of Rs.25,000/- each.

iv) The appellants shall not enter the jurisdiction of village Manjur, Tq. Kopargaon, Dist. Ahmednagar till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the appellants should give complete address of their proposed residence with their mobile numbers to the Trial Court as well as to the Investigating Officer.

v) They shall not tamper with the evidence of the prosecution in any manner.

vi) They shall not indulge in any criminal activity.

vii) Bail before the Trial Court.

viii) Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5,000/- to be paid by High Court Legal Services, Sub Committee, Aurangabad.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm