

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 782 OF 2017

Malti Rajendra Naik.

..Appellant.

Versus

State of Maharashtra.

..Respondent.

Mr. A. M. Shaikh for the Appellant.

Mr. A. R. Kapadnis, APP for the State.

Coram : Ranjit More &

Dr. Shalini Phansalkar-Joshi, JJ.

Date : **November 21, 2017.**

P. C. :

1. Heard the learned Counsel for the Appellant and the learned APP for the State. The Appellant – original accused No.7 along with nine others came to be arrested on 22nd July 2016 in FIR bearing CR No.I-266 of 2016 by Nerul Police Station on the allegation of commission of offence punishable under sections 302, 364, 323, 143, 147, 149, 504 and 506 of the Indian Penal Code, 1860 and sections 3(1)(r)(s), 3(2)(v)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The bail application bearing No.76 of 2016 was filed by the Appellant before the learned Additional Sessions Judge, Thane. The same came to be rejected on 2nd August 2017

3. This appeal is placed before the Division Bench since the provisions of Atrocities Act are applied against the Appellant.

4. The said FIR is registered at the instance of one Shahaji Sopan Sonawane, the father of deceased Swapnil. The prosecution case discloses that on 18th July 2016, deceased Swapnil informed his father that around 8.30 p.m., 4 to 5 persons had taken him to Police Station after beating him, where his statement was recorded and thereafter he was allowed to go. The original complainant thereafter approached the Police Station on 19th July 2016. However, his complaint was not recorded by the police. It is further alleged in the FIR that while in Police Station at about 7.30 p.m., the Complainant received phone call from his daughter that around 15 to 20 persons were trying to break open the door of their house. On this call, the Complainant immediately rushed to his house. There, he found that accused Sagar Naik, Durgesh and other 15 to 20 persons had gathered near his house. It is alleged that these accused took his wife and deceased son – Swapnil on the terrace and assaulted the Complainant and deceased – Swapnil. They also gave abuses in the name of caste. When accused left the scene of offence,

Swapnil was taken to hospital where he succumbed to the said injuries. After completion of investigation into the subject FIR, the charge-sheet is already filed in the concerned Sessions Court. Copy of the charge-sheet is annexed to the petition. We have gone through statements of eye-witnesses including that of Sabira Sayyad and Vishal Rane, which show that Appellant was present on the spot of incident at the time of commission of offence. Nevertheless, the vital blow given to the deceased – Swapnil on the head is not attributed to the present Appellant.

5. According to the prosecution in the identification parade, Complainant and said Vishal Rane have identified the present Appellant as a person accompanying Sagar Naik. However, no specific role is attributed to the present Appellant. We have also perused the post-mortem report of the deceased – Swapnil. The report discloses that the cause of his death is head injury, which *prima facie* in our opinion cannot be attributed to the present Appellant. The Appellant is woman and she is in custody since 22nd July 2016. The investigation is over and charge-sheet is also filed. Taking totality of the facts and circumstances of the case into consideration, we do not find any

impediment to grant bail to the present Appellant in the subject crime. The appeal is accordingly disposed of by passing following order :

- O R D E R -

The Appellant is directed to be released on bail on her furnishing PR bond of Rs.20,000/- to the satisfaction of the trial Court on the conditions that (i) she shall not hamper or tamper with the prosecution evidence and (ii) she shall attend Nerul Police Station as and when required.

[Dr. Shalini Phansalkar-Joshi, J.]

[RANJIT MORE, J.]