

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 820 OF 2019

Dinesh Laxman Chavan

... Appellant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Satyavrat Joshi I/b Nitesh Mohite for the Appellant.
Mrs. M.M. Deshmukh, APP for the Respondent/State.
Ms. Megha Bajoria, appointed Advocate for Respondent No.2.

**CORAM : INDRAJIT MAHANTY &
A.M.BADAR, JJ.**

DATE : 08TH JULY, 2019

P.C.

1. Heard.
2. Admit.
3. Heard forthwith by consent of parties.
4. By this Appeal, the Appellant/Accused is challenging the order passed below Exh.43 in Special Atrocity Sessions Case No. 19 of 2015 by learned Special Judge, Pune on 01.08.2016. The Applicant along with other accused persons is facing trial for offences punishable under Sections 302, 307, 341, 363 read with Section 34 of the IPC, Section 32B, 33 of Bombay Money Lenders Act and Sections 3[1][i][vi]

[2][v] of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

5. Heard learned Counsel appearing for the Appellant. He argued that co-accused Mayur Ghule having similar role has already been released by this Court by order dated 06.10.2015 passed in Bail Application No. 1219 of 2015. The learned Counsel further argued that no overt act of dousing deceased with petrol and setting with ablaze is attributed to the Appellant. Therefore, the Appellant is behind the bar for more than 4 to 5 years needs to be released on bail.

6. Per contra, learned APP as well as learned Counsel appearing for Respondent/victim vehemently opposed the Appeal by contending that bail is granted to the co-accused as his name was not figuring in the FIR which is infact the Dying Declaration of deceased Anil Khirsagar. It is further argued that recording of evidence in the Special Case has already begun and therefore, considering the nature of offence and role attributed to the Appellant, he is not entitled to bail. They supported the impugned order of the learned Special Judge, Pune.

7. We have considered the rival submissions and also perused the record made available. Undisputedly, we have also noted the fact

that on earlier occasion, application for bail moved by the Appellant before this Court was withdrawn vide order dated 19.09.2016 passed in Criminal Bail Application No. 1760 of 2016 as charge was framed and therefore, liberty was granted to the Appellant to approach the concerned Court.

8. Undisputedly, co-accused Mayur Ghule has preferred Bail Application No. 1219 of 2015 before this Court and same was allowed on 06.10.2016 by learned Single Judge and the order with the following reasons:

“6. Perused the charge-sheet, in particular, the statements of the deceased i.e. 1st and 2nd dying declarations, statements of vendors, spot panchanama and the statement of the mother. Admittedly, the name of the present applicant does not find place in the complaint which is later treated as a dying declaration. The first dying declaration is consistent with the disclosure made to the brother and mother by the deceased. In the second dying declaration, the applicant is alleged to have assaulted the deceased and has been named for the first time. Infact, the main role is attributed to Dhananjay Ghule, who is alleged to have poured petrol on the deceased and set him on fire. No motive is alleged as against the applicant. There are no antecedents against the applicant. Even otherwise, the investigation is complete and charge-sheet is filed. ”

9. Allegations against the Appellant as well as co-accused are to the effect that victim was abducted on 22.01.2015 at about 11.00 a.m. Bhaji mandai of Hadapsar and subsequently, by pouring petrol on his person and setting him as ablaze. Anil Khirsagar died on 27.01.2015. First Dying Declaration of Anil came to be recorded on 22.01.2015 i.e. on the day of incident, which is recorded by Police Sub-Inspector. In the said Dying Declaration, the deceased has declared that he had borrowed an amount of Rs.50,000/- from Accused Dhananjay Ghule with whom he was serving as Driver. After leaving that employment, the accused Dhananjay used to force him to return that amount. Deceased Anil has declared that he was abducted on 22.01.2015 by Appellant Dinesh Chavan along with Dhananjay and one more person. He was taken to Mohamaad Wadi. After assaulting him at that place, accused persons took him to the office at Kadnagar, where he was made to consume liquor and was assaulted there. Electricity shock was given to him by using wire of motorcycle. Thereafter, at about 5.30 p.m., he was set ablaze by accused Dhananjay Ghule by pouring petrol on his person.

10. The second Dying Declaration of Anil came to be recorded on 23.01.2015 by Police Inspector in presence of resident Doctor of Sasoon hospital who certified that the deceased was conscious and in

condition to give statement. Further in second Dying Declaration, the deceased Anil had clarified the name of unknown persons as Mayur. The averment against Appellant as well as Mayur are to the effect that they along with co-accused Dhananjay had beaten Anil by the means of wooden handle of "Tikau". Neither Mayur, nor Appellant are given role of pouring petrol or setting deceased Anil ablaze. In other words, averments against co-accused Mayur and Appellant are identical and as co-accused Mayur is released on bail by this Court, we are of the considered opinion that the Appellant also deserves the similar treatment.

11. In the light of this fact, we are unable to sustain the impugned order of rejection of bail of the Appellant passed on 01.08.2016 by the learned Special Judge, Pune. Therefore, the order.

ORDER

- i) The Appeal is allowed.
- ii) The impugned order passed by the learned Special Judge Pune below Exhibit No. 43 in Special Atrocity Sessions Case No. 19 of 2015 is quashed and set aside.
- iii) The Bail Application at Exh. 43 moved by the Appellant/accused is allowed. He is directed to be released on bail on executing PR Bond of Rs.20,000/- with one or two sureties in the like amount.

- iv) The appellant shall attend the Kondhwa Police Station, Pune on the first Saturday between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (v) The appellant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (vi) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (vii) The appellant to cooperate with the conduct of the trial;
- (viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the appellant's bail.
- (ix) Appeal is disposed of accordingly.

(A.M.BADAR, J)

(INDRAJIT MAHANTY, J)