IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1073 OF 2019

RUPESH GIRIDHAR WARGHADE)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mr.Mandar Goswami, Advocate for the Appellant.

Mrs.S.V.Sonawane, APP for the Respondent – State.

Mr.D.P.Adsule, Advocate for Respondent Nos.3 and 4.

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

DATE : 8th AUGUST 2019

ORAL JUDGMENT : (PER : A.M.BADAR, J.)

1 This is an appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by accused no.2 Rupesh Warghade challenging the order dated 20th June 2018 passed by the learned Special Judge, Nashik,

thereby rejecting the application for bail moved by the appellant/accused in Crime No.58 of 2017 registered with Police Station Igatpuri for offences punishable under Sections 302 read with 34 of the Indian Penal Code as well as under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 7(1)(d) of Protection of Civil Rights Act.

2 Heard the learned counsel appearing for the appellant/accused. He drew our attention to the statements of Dhanesh Gatir and Akshay Kharke and argued that both these witnesses have not disclosed the incident to police and they made their statement when they were called in the police station and that too, after the day of the incident. The learned counsel further argued that statement of Deepak Ramnarayan Badaya, owner of the hardware shop shows that weapons of offence were purchased by accused no.1 Narendra Patne and not by the present appellant/accused. He further argued that now the charge-sheet is filed and therefore, further pre-trial custodial detention of the

appellant/accused is not warranted, considering the fact that no role is attributed to him in the crime in question.

3 We have also heard the learned counsel appearing respondent/victims of the crime in question so also the learned APP. They argued that there is overwhelming evidence connecting the appellant to the crime in question as there are eye witnesses to the crime in question apart from corroborative evidence of recovery of blood stained clothes and consequent Chemical Analysis Report.

4 We have considered the submissions so advanced and also perused the papers of investigation placed before us. The incident in question took place in the evening hours of 4th June 2017 at the bank of Talegaon dam in Igatpuri Taluka of Nashik. According to the prosecution case, two persons died in the incident. Their names are Amit Barve and Manik alias Ismail Pathan. According to the prosecution case, accused no.1 Narendra Patne was having love affair with sister of Amit Barve

(since deceased) and they were to marry. However, taking advantage of the fact that accused no.1 Narendra Patne had left the place of residence for some work, sister of Amit Barve (since deceased) was married to somebody else and this provoked the accused persons to commit the crime in question.

5 It is seen from statements of Dhanesh Gatir and Akshay Kharke that Amit Barve (since deceased) had invited them for a liquor party at Talegaon dam in the evening hours of 4th June 2017. They were joined by Manik alias Ismail Pathan (since deceased). When that liquor party was in progress, accused no.1 Narendra Patne accompanied by appellant/accused Rupesh Warghade came there. They left the spot after brief interaction and thereafter, again returned at about 7.45 p.m. armed with wooden logs. Initially, accused no.1 Narendra Patne started assaulting Amit Barve (since deceased) by means of wooden log. His friend Manik alias Ismail Pathan tried to intervene. Thereafter, accused no.1 Narendra Patne and appellant/accused Rupesh Warghade started assaulting both of them. Because of

assault by the appellant/accused so also accused no.1 Narendra Patne, Amit Barve and Manik @ Ismail Pathan died on the spot. Their dead bodies were noticed by the watchman of the Rest House, namely Bharat Sonawane and that is how the crime in question came to be registered.

6 During the course of investigation, statements of Dhanesh Gatir and Akshay Kharke, who are eye witnesses to the crime in question, came to be recorded on the very next date i.e. on 5th June 2017. Blood stained clothes of the appellant/accused came to be seized on 7th June 2017.

7 Record of the investigation, as such, reveals that initially both accused persons including the appellant/accused visited the spot of the incident and on brief interaction with Amit Barve (since deceased) and thereafter they left the spot to come again armed with wooden logs and that is how both deceased suffered fatal blows at the hands of the appellant/accused so also accused no.1 Narendra Patne. Blood stained clothes of the

appellant/accused are also seized two days after the incident. Delay in recording the statements can be considered at the stage of trial and that too, on cross-examination of the Investigating Officer. There is element of instance of self preservation which will have to be considered after recording evidence of both the eye witnesses. The trial is reported to be going on and two witnesses are already examined. Hence, at this stage, it cannot be said that the learned Special Judge erred in rejecting the bail application of the appellant/accused. Therefore the order :

ORDER

The appeal is dismissed.

(A. M. BADAR, J.) **(INDRAJIT MAHANTY, J.)**