

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

CRIMINAL APPEAL NO. 1231 OF 2018

Shankar Sambhaji Thorat

... Appellant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Ganesh Bhujbal for the Appellant.
Mrs. S.V. Sonawane, APP for the Respondent No.1/State.
Ms. Megna Bajoria for the Respondent No.2.
Mr. Navnath Dhavale, SDPO, Karad present.

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

DATE : 24TH JUNE, 2019

P.C.

1. By this appeal, the Appellant/Accused in Special Case No. 17 of 2018 for offences punishable under Sections 302, 120(B) read with 34 of Indian Penal Code as well as under Section 3(2)(v), 3(2)(va), 6 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is challenging the order dated 23rd July 2018 passed by the learned Special Judge & Additional Sessions Judge, Karad, thereby rejecting his application for releasing on bail.

2. Heard Shri. Ganesh Bhujbal, learned Counsel appearing for the

Appellant/Accused. He argued that there is no evidence to connect the Appellant with the crime in question. In this submission, the vehicle in which the deceased was allegedly taken, was hired by accused Suhas. Evidence regarding motive of alleged crime is also sketchy inasmuch as the two wheeler was returned back to the deceased soon after there was dispute between the accused persons and the deceased. Investigation of the crime in question is over and therefore, the Appellant/Accused is entitled to be released on bail.

3. As against this, learned APP as well as Ms. Bajoria learned Counsel appearing for the first informant vehemently oppose the appeal by contending that there is acceptable evidence regarding the last seen theory and that evidence to show that the deceased was in company of the Appellant/Accused and soon thereafter, his dead body was found. Report of postmortem examination of dead body shows that death of deceased was homicidal.

4. We have considered the arguments advanced by learned Counsel for the respective parties and perused the chargesheet as well as impugned order rejecting the bail application by the learned Special Court.

5. The crime in question is registered on the basis of FIR lodged by Mrs.Malan Pratap who happens to be sister of deceased Baban Gade. The FIR reveals that at about 7.00 pm of 4th January 2018, both the accused persons including Appellant/Accused Shankar had taken deceased Baban Gade with them in the four wheeler vehicle. The deceased was also seen in company of the appellant/accused and co-accused Suhas by a witness named Sagar at about 7.30 pm of 4th January 2018 near petrol pump at village Vathar. In the morning hours of 5th January 2018 dead body of Baban was found by the side of kaccha road in the village. Report of postmortem examination of dead body shows that Baban Gade died due to cardio respiration arrest caused by multiple crush injuries coupled with head injury.

6. During the course of investigation, clothes of the accused persons came to be seized. Learned APP has pointed out that shirt of the Appellant/Accused was found stained with human blood. The vehicle in which the deceased was taken by accused persons, came to be seized during the course of investigation. The same was found to be stained with blood and rubber flap of mudguard of the vehicle was also found broken. Statement of vehicle owner namely Abaso Yadav shows that co-accused Suhas has taken that four wheeler on 4th

January 2018. The first informant as well as eye witness Sagar are stating that in the said four wheeler vehicle, the deceased was taken by the accused person including the present Appellant. Within few hours Baban Gade died homicidal death.

7. The prosecution has also averred that accused persons were having motive to eliminate the deceased on account of non-refund of money taken from them for purchase of motorcycle. The same is reflected from statements of witnesses.

8. In this view of the matter, we unable to find any infirmity in the impugned order rejecting the bail application of the Appellant/Accused.

9. Hence, the instant Appeal stands dismissed.

(A.M.BADAR, J)

(INDRAJIT MAHANTY, J)