

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.283 OF 2019

(Anil s/o Vishwanath Dukare vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri R.M. Daga, Advocate for appellant.

Shri S.A. Ashirgade, Additional Public Prosecutor for
respondent no.1.

CORAM : P.N. DESHMUKH AND
 PUSHPA V. GANEDIWALA, JJ.

DATED : JUNE 4, 2019

Challenge in this appeal is to order dated 6/3/2019 passed by learned Additional Sessions Judge, Yavatmal in Special (Atrocity) Case No. 1/2019 thereby rejecting application of appellant for bail.

Appellant is involved in Crime No. 64/2018 registered at Police Station, Wadki, District Yavatmal for the offences punishable under Sections 302 and 201 of Indian Penal Code and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Shri Daga, learned Counsel for appellant, submits that on 2/3/2018 dead body of one female was found about 15 kms. away from Wani town, which was identified to be of Shilpa with whom appellant was in live-in relationship. It is contended that on finding such dead body, on the following day respondent no.2 lodged report against unknown person, upon which

offences as aforesaid came to be registered. It is further contended that for the period of about eight months thereafter, nothing took place, however, on 1/11/2018 appellant came to be arrested on suspicion. It is submitted that after arrest of appellant, on 8/11/2018 statement of one Ranjanabai in whose house appellant resided on rent for some time with deceased, came to be recorded and relying upon said statement, prosecution has based its case on the theory of last seen together contending that said witness had lastly seen appellant with deceased together. It is specifically pointed out by learned Counsel for appellant that her statement would reveal that she had seen deceased in the company of appellant about eight months prior to incident. It is, therefore, submitted that her statement does not establish theory of last seen together in any manner. It is further contended that except statement of Ranjana, there is absolutely no evidence against appellant and admittedly he has no criminal antecedents. It is, therefore, submitted that appellant may be released on bail by imposing suitable conditions.

Shri Ashirgade, learned Additional Public Prosecutor for respondent no.1, has opposed the appeal by submitting that apart from appellant having been seen in the company of deceased as revealed from the statement of Ranjana, another circumstance, which needs consideration is call details report of his mobile, which was seized at his instance during the course of investigation and its location on the day of incident is of the same place where the dead body was found. It is

submitted that appellant was as such very much present on the spot wherefrom dead body was recovered and on this ground, appellant is not entitled to bail.

Having considered submissions advanced by learned Counsel for the parties and the fact that in spite of registration of offences in March 2018, appellant is arrested about eight months thereafter and since from the documents, it could not be pointed out on what basis appellant came to be arrested, there appears nothing, which could be considered against appellant. The learned Additional Public Prosecutor could not point out any other evidence except call details reports and statement of Ranjana.

In the circumstances and since statement of Ranjana is admittedly recorded seven days after effecting arrest of appellant, there appears much substance in the submissions advanced by learned Counsel for appellant that her statement only reveals that she had provided one room owned by her to appellant where he resided along with deceased for a period of two-three months during which period deceased informed her that they are residing there after their love marriage. Later part of her statement, however, would reveal that some time during Holi in the month of March, appellant along with deceased left the room since he was to shift to Wani for his livelihood. As such, from the statement of Ranjana, no case based on theory of last seen together could be made out as according to statement of Ranjana, deceased was seen in the company of appellant about

eight months prior to incident.

In that view of the matter, case of prosecution based on last seen theory, prima facie, does not appear to be convincing. Thus, only evidence on record is call details reports and seizure of appellant's mobile at his instance under panchanama. However, in the absence of any other suitable evidence, this evidence is too short to connect appellant with the present crime. Therefore, following order is passed :

Appellant shall be released on bail on his executing P.R. bond in the sum of rupees fifty thousand with one surety in the like amount in Crime No. 64/2018 registered by Police Station, Wadki, District Yavatmal. Appellant shall mark his presence in the concerned Police Station on the first day of each month initially for a period of six months and thereafter on the first day of every quarter during pendency of trial .

The appeal stands disposed of in the above terms.

JUDGE

JUDGE

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