

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.326 OF 2020

- | | | | |
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| 1. | Ganpat Ghisulal Lohar |] | |
| | R/at. Balaji Nagar, Medankar Wadi, Tal. |] | |
| | Khed, Dist. Pune. |] | |
| 2. | Sagar Ganpat Vitkar |] | |
| | R/at, Nanekar Wadi, Tal. Khed, Dist. |] | |
| | Pune. |] | ... Appellants |

Versus

- | | | | |
|----|--------------------------------------|---|-----------------|
| 1. | The State of Maharashtra |] | |
| 2. | Baburao Namdeo Shelar |] | |
| | R/at. C/o. Balasaheb Mengade, Amrut |] | |
| | Nagar, Medankar Wadi, Tal. Khed, |] | |
| | Dist. Pune. |] | |
| | Originally R/at., Chicholi (Kajale), |] | |
| | Post: Ashiv, Tal. Ausa, Dist. Latur. |] | ... Respondents |

...

Mr. Vikas Shivarkar for the appellants.

Mr. Deepak Thakare, Public Prosecutor with Mr. K.V. Saste, A.P.P.
for respondent No.1 -State.

Mr. Karansingh Rajput, appointed advocate for respondent No.2.

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CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 04TH FEBRUARY, 2021.

PRONOUNCED ON : 23RD FEBRUARY, 2021.

JUDGMENT:- [Per: Manish Pitale, J.]

1. By this appeal filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, ("**Atrocities Act**"), the appellants have challenged order dated 18/01/2020 passed by the court of Additional Sessions Judge, Khed-Rajguru Nagar, Pune whereby application for grant of bail filed by the appellants was rejected.

2. The appellants are accused Nos.4 and 6 in connection with the First Information Report ("**FIR**") dated 17/08/2019 registered at Police Station Chakan, Pune for offences under Sections 302, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code ("**IPC**") as also under Sections 3(2)(va) of the Atrocities Act.

3. There are five other accused persons named in the FIR. Respondent No.2 is the original complainant at whose behest, the FIR stood registered. Respondent No.2 approached the police station on 17/08/2019 stating that the appellants herein along with other accused persons had assaulted his son Akash with wooden

logs, beating him badly, as a result of which the said Akash suffered multiple injuries. According to respondent No.2, the said incident occurred on 04/08/2019. The accused persons including the appellants brought the said Akash to his residence at about 8.00 p.m. where respondent No.2 was present. They stated that since the said Akash was harassing and teasing girls of Swami Samarth School, Amrutnagar, they have beaten him. They further threatened respondent No.2 to send the said Akash to his village immediately. According to respondent No.2, when the said Akash was found unconscious in the next morning due to injuries that he suffered, he had to be admitted to the hospital. According to respondent No.2, the accused persons paid the treatment expenses of said Akash, yet on 11/08/2019, Akash succumbed to his injuries. It was stated by respondent No.2 that since he was repeatedly threatened and also because the accused were bearing the treatment expenses of Akash, he did not approach the police earlier and it was only after his son died and postmortem of his body was conducted that respondent No.2 could gather courage to approach the police for registration of FIR.

4. In pursuance of the registration of FIR, the police initiated investigation and the accused persons specifically named by respondent No.2 including the appellants, were arrested on 18/08/2019. Upon completion of investigation, charge-sheet was submitted on 16/10/2019.

5. On 06/11/2019, the appellants moved an application for grant of bail before the court below. By the impugned order dated 18/01/2020, the court below rejected the application and the said order is subject matter of challenge in this appeal.

6. Mr. Shivarkar, learned counsel appearing for the appellants submitted that a perusal of the material on record, particularly, the statements of the complainant and the witnesses would show that there was no eye-witness to the incident and that the names of the appellants had been included as accused only on the basis of suspicion. By inviting attention of this court to the statements of witnesses, it was submitted that the appellants were not specifically named and that the major role was attributed to some of the other accused persons. It was also submitted on behalf of the appellants that there was delay in registration of FIR in the present case. Learned counsel for the appellants vehemently submitted that the perusal of the postmortem report would show that even if there are 13 injuries found on the deadbody, none of them was on the vital part of the body. It was further submitted that since the charge-sheet was also filed as far back as on 16/10/2019 and the investigation was completed, there was no purpose in continuing the custody of the appellants. It was further submitted that the appellants are the bread winners of the family and that in the absence of any clinching material showing their involvement, they

deserved to be enlarged on bail.

7. Mr. Thakare, learned Public Prosecutor appearing for the respondent-State opposed the prayer made in the present appeal and it was submitted that the material on record sufficiently demonstrated the active role played by the appellants, which led to the death of the son of respondent No.2. It was submitted that the ingredients of the offence under Section 302 and other offences under the IPC, as also the offence under the Atrocities Act were clearly present and that the appellants had failed to make out even a *prima facie* case in their favour. It is further submitted that there is every possibility of the witnesses being threatened and the evidence being tampered, if the appellants are released on bail.

8. Mr. Rajput, learned counsel appointed to appear on behalf of respondent No.2 (original complainant) vehemently opposed the present appeal. It was submitted that in the complaint leading to registration of the FIR, respondent No.2 had clearly named the appellants along with the other accused persons as assailants and that there was sufficient material on record to demonstrate the active involvement of the appellants in the present case. On this basis, it was submitted that the appeal deserved to be dismissed.

9. A perusal of the material on record shows that although the incident is said to have taken place on 04/08/2019, the FIR came to

be registered on 17/08/2019. This is one of the grounds raised on behalf of the appellants for seeking bail. But, a perusal of the complaint leading to registration of the FIR, as also the statement of respondent No.2 recorded by the police, shows that even though the incident is said to have taken place on 04/08/2019 and the victim died on 11/08/2019, respondent No.2 has made statements indicating as to why he approached the police only on 17/08/2019 for registration of FIR. At this stage, it cannot be said that the time taken for approaching the police was fatal or that, it could be a factor that could enure in favour of the appellants for grant of their prayer of bail.

10. As regards the other contentions raised on behalf of the appellants, we have perused the material on record and it is found that in the complaint leading to registration of the FIR, respondent No.2 has clearly named both the appellants along with other accused persons as the persons responsible for the injuries suffered by the victim, which ultimately led to his death. It is not as if the appellants' names were absent at the stage when the FIR was registered when it is specifically stated by respondent No.2 that the appellants along with other accused persons brought the son of respondent No.2 i.e. the victim to his house and that they themselves stated that the victim was beaten by them for his alleged activities of teasing girls of a particular school. Therefore, it cannot be said that even *prima facie* there is no material against the

appellants.

11. Apart from this, respondent No.2 has specifically stated the names of the appellants in his statement recorded by the police during the course of investigation. The statements given by other witnesses also corroborate the fact that on 04/08/2019, the incident had occurred wherein the victim had been badly beaten, which ultimately resulted in his death.

12. As regards the contention raised on behalf of the appellants that the postmortem report indicated that there were no injuries on the vital parts of the body, a perusal of the postmortem report shows that as many as 13 injuries were found on the body. It has to be taken into consideration that the postmortem was conducted on 12/08/2019 while the injuries were inflicted on 04/08/2019. Even though the list of 13 injuries shows that they appeared to be on the hands and legs of the deceased, it is also recorded in the postmortem report that there was a thin layer of subarachnoid hemorrhage present over cerebellum and over left side of occipital region. Apart from this, it is specifically stated in respect of spinal cord that there was undisplaced linear fracture present over fourth cervical vertebra with extravasations with blood in surrounding region. These two injuries present in the brain and spinal cord clearly match with the allegations made in the complaint by respondent No.2 that the accused persons including the appellants

had beaten the victim badly with wooden logs all over the body of the victim. The cause of death in the postmortem report is stated to be death due to multiple injuries.

13. In view of the aforesaid material available on record, we are of the opinion that the court below was justified in taking note of the facts that the offences are of serious nature, that respondent No.2 i.e. the informant belongs to the scheduled caste community, the postmortem report shows the cause of death as death due to multiple injuries and that therefore, the appellants do not deserve to be enlarged on bail. The manner in which respondent No.2 has made statements in the complaint as also his statement recorded by the police during the investigation, demonstrate that there is every possibility of respondent No.2 and other witnesses being pressurized, which would, in turn, interfere with the fairness of the trial proceedings. We do not find any error on the part of the court below in observing that if the appellants were to be released, the witnesses may be pressurized and that the evidence may be tampered.

14. In view of the above, we are of the opinion that no error can be attributed to the impugned order passed by the court below. The present appeal is devoid of any merits. Accordingly, the appeal is dismissed.

15. At the same time, it appears from the charge-sheet placed on record that there are about 42 witnesses to be examined by the prosecution. Therefore, we expect the trial court to expedite the trial proceedings and to render the judgment, as early as possible.

16. In view of the disposal of the appeal, all connected interim applications, if any, shall stand disposed of.

17. The observations made hereinbefore are *prima facie* in nature and confined to the adjudication of the present appeal only.

18. Mr. Rajput, learned counsel appointed for respondent No.2 assisted this court in an able manner. His fees is fixed at Rs.7,500/-. The High Court Legal Services Committee, Mumbai, is directed to pay the said amount to the appointed advocate Mr. Karansingh Rajput within four weeks from the date of receipt of this order.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)