

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

CRIMINAL APPEAL NO.504 OF 2020

Nikhil Dnyanoba Tambalge
Aged 24 years, R/o: Balajinagar,
Medankarwadi Chakan, Tal. Khed,
District: Pune (at present lodged at
Yerwada Central Jail, Pune.

..Appellant

Versus

State of Maharashtra
At the instance of Chakan Police Station,
Pune. C.R. No.1127 of 2019

..Respondent

Mr. Samir A. Vaidya, Advocate for the Appellant.
Smt. A. S. Pai, APP for the Respondent - State.

**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.
DATE : 10th MARCH, 2021**

JUDGMENT (Per Manish Pitale, J.)

1. This is an appeal under section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act") challenging the order dated 28.08.2020 passed by the Court of Special Judge, Pune, whereby application for bail filed on behalf of the appellant was rejected.

2. The appellant is one of the accused in 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 as also under section 3(2)(Va) of the Atrocities Act.

3. As per the FIR registered against the appellant and other accused persons, the respondent No.2 (original complainant) approached the police on 17.08.2019 stating that the accused, including the appellant herein had assaulted his son Akash (deceased) with wooden logs, due to which he suffered multiple injuries. According to respondent No.2, the incident had occurred on 04.08.2019. The accused persons had brought the said deceased to his residence at about 8:00 p.m. where respondent No.2 was present. They claimed that since the deceased was allegedly harassing certain girls of Swami Samarth School, Amrutnagar, they had beaten him. They threatened respondent No.2 to send the deceased to his village immediately.

4. According to respondent No.2, the deceased fell unconscious and he had to be admitted to the hospital. When the serious condition of the deceased was known to the accused, they came forward and paid the expenses for his treatment, but he succumbed to his injuries on 11.08.2019. According to the respondent No.2, the accused persons repeatedly threatened him and since they had borne the expenses of the treatment he did not approach the police earlier and after his son died, the respondent No.2 eventually approached the police for registration of the FIR.

5. On completion of investigation, charge-sheet was submitted on 16.10.2019. The appellant moved an application for bail before the Court below, which stood rejected by the

impugned order. The Court below found that the offence was of serious nature and that there was material on record to connect the appellant with the offence and further that there was possibility of the witnesses being pressurized, if the appellant was released on bail.

6. Mr. Samir A. Vaidya, learned counsel appearing for the appellant submitted that a perusal of the charge-sheet and the material on record demonstrated that there was nothing to connect the appellant with the aforesaid offence. It was submitted that there were no eye witnesses and that there was delay in registration of the FIR. On this basis, it was submitted that the impugned order deserved to be set aside and the appeal deserved to be allowed.

7. Smt. A. S. Pai, learned APP appearing on behalf of the respondent - State opposed the contentions raised on behalf of the appellant and brought to the notice of this Court that an appeal bearing Criminal Appeal No.326 of 2020, filed by two co-accused persons, was already dismissed by this Court by judgment and order dated 23.02.2021. It was submitted that allegations against the accused persons were similar and therefore the present appeal must also fail. It was further submitted that even otherwise there was sufficient material to link the appellant with the offence in question and therefore the appeal deserved to be dismissed.

8. A perusal of the judgment dated 23.02.2021 passed by this Court in Criminal Appeal No.326 of 2020 in Ganpat Lohar and another Vs. The State of Maharashtra and another shows that the appeal of co-accused persons was indeed dismissed by this Court. The nature of contentions raised in the present appeal are similar to those raised in the aforesaid appeal and therefore, on this ground itself the present appeal deserves to be dismissed.

9. Even otherwise, we find that the contentions raised on behalf of the appellant in the present appeal cannot be accepted. The alleged delay in registration of the FIR appears to be explained in the complaint itself lodged by the respondent No.2. In any case, it would be a matter to be decided in trial upon leading evidence. But we are of the opinion that at this stage, prayer for bail made on behalf of the appellant cannot be granted merely because there was alleged delay in registration of the FIR.

10. We have also perused the material on record. We find that there are witnesses who have made statements which support the statement made by the respondent No.2 (original complainant) with regard to the manner in which the incident took place in the present case. There appears to be material to *prima-facie* link the appellant with the offence and role attributed to him. The offence is certainly of a serious nature and considering the fact that the respondent No.2 belongs to a socially and economically weak strata of society, there is

(904)-Apeal-504-20.doc.

possibility of the respondent No.2 and other witnesses being pressurized, if the appellant is released on bail.

11. Therefore, we do not find that the contentions raised on behalf of the appellant can be accepted. No error can be attributed to the findings rendered by the Court below while rejecting the bail application of the appellant. Accordingly, the appeal is dismissed. The direction given by this Court in its judgment and order dated 23.02.2021 in Criminal Appeal No.326 of 2020 filed by the co-accused persons regarding expeditious disposal of proceedings by the Court below is reiterated and we expect that the Court below would complete the trial at the earliest.

12. In view of the disposal of the appeal, all connected applications, if any, stand disposed of. It is made clear that the observations made in this order are *prima-facie* in nature and they are confined to adjudication of the present appeal only.

[MANISH PITALE, J]

[S. S. SHINDE, J]

Balaji
G.
Panchal
Digitally
signed by
Balaji G.
Panchal
Date:
2021.03.20
11:44:48
+0530