

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 332 OF 2021

Santosh s/o Madhu Bankar,
aged about 34 years, Occ. Labour,
R/o Soundad, Tahsil Sadak Arjuni,
District Gondia.

...APPELLANT

Versus

1. State of Maharashtra,
through P.S.O. Dawniwada,
Tah. Sadak Arjuni, District Gondia.
2. Sevangan w/o Rajesh Kirsan,
aged about 30, Occ. Household,
R/o Lohara, District Gondia.

...RESPONDENTS

Shri Virat S. Mishra, Advocate for the appellant.
Shri T.A. Mirza, A.P.P. for respondent No.1.
Ku. Divya Joshi h/f Dr. Mrs. R.S. Sirpurkar, Advocate for respondent
No.2 (appointed).

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**CORAM : V. M. DESHPANDE &
PUSHPA V. GANEDIWALA, JJ.
DATED : OCTOBER 12, 2021.**

ORAL JUDGMENT : (PER : V. M. DESHPANDE, J.).

This is an Appeal under Section 14-A of the
Scheduled Castes and the Scheduled Tribes (Prevention of
Atrocities) Act, 1989, challenging the order passed by the

learned Additional Sessions Judge, Gondia dated 28/07/2021 in M.C.B.A. No. 167/2021. By the said order, the learned Judge rejected the application filed on behalf of the appellant for pre-arrest bail.

2] Admit. Taken up for final hearing forthwith.

3] Heard Shri Virat Mishra, learned counsel for the appellant, Shri T.A. Mirza, learned Additional Public Prosecutor for respondent No.1/ State and Ku. Divya Joshi h/f Dr. Mrs. R.S. Sirpurkar, learned counsel for respondent No.2, who could not remain present today because of her ill health, who was appointed by this Court as an amicus in this matter.

4] We have also perused the reply filed on behalf of the prosecution as well as by the respondent No.2.

5] The submission of the learned counsel for the appellant is that the name of the appellant is not figuring in the First Information Report. He further submitted that as per reply

filed by the prosecuting agency before the learned Trial Court, the prosecution wants custody of the present applicant for recovery of hoe and other articles related to digging of pit. The learned counsel submitted that he is a respectable person of the Society, and therefore, he be released on Anticipatory Bail by imposing conditions upon him.

6] Per contra, the learned Additional Public Prosecutor Shri T.A. Mirza vehemently opposed the Appeal, which is in the nature of pre-arrest bail. He pointed out from the reply filed on behalf of the prosecuting agency that the appellant cannot be rulled out, being the master mind in the crime, inasmuch as he has pointed out from the CDR reports collected by the prosecuting agency during the investigation and tower location, which clearly shows that the present appellant was in constant touch with the other co-accused, some of whom are in jail. Along with the reply, the prosecuting agency has placed on record the gist of the CDR reports and also the tower location. He submitted that the appellant is an influential person of the area, and if he is granted pre-arrest bail, the possibility of he

pressurizing the prosecution witnesses cannot be ruled out.

7] Ku. Joshi, learned counsel, also read out the reply filed on behalf of the complainant. From her reply, it is clear that the appellant belongs to a very wealthy family.

8] This Appeal along with Appeal No. 347/2021 filed by the co-accused Geeta were listed before this Court (Coram : V.M. Deshpande & Amit B. Borkar, JJ.), notices were issued to the prosecution as well as the complainant. The order dated 21/09/2021 would show that the complainant/ respondent No.2 was required to be brought before this Court under the Police escort from her residential place situated in the Gondia District. The said fact was observed by this Court in order dated 21/09/2021. Since respondent No.2 belongs to the Scheduled Tribe and a very poor person and was not able to engage the services of lawyer, therefore this Court appointed Dr. Mrs. R.S. Sirpurkar to represent her and accordingly Dr. Sirpurkar prepared the reply.

9] The First Information Report is lodged by respondent No.2, who is one of the eye-witnesses of the brutal attack made on her husband by the accused persons. The learned counsel for the appellant submitted that the name of the appellant is not figuring the First Information Report. Reading out of the First Information Report shows the same. However, the First Information Report is not the last word of the prosecution, rather it is the starting point of the prosecution. The First Information Report puts wheels of criminal law of justice into motion. By registration of the First Information Report and crime, the Investigating Officer gets authorization for investigating the crime if it is a cognizable offence. During the Court of investigation, the role of the co-accused persons may surfaces though they are not named in the First Information Report. Complicity of the accused persons, whose names are not figuring the First Information Report, may surface lateron during the course of investigation. Fullest opportunity has to be given to the Investigating Officer to investigate the crime in question.

10] In that view of the matter, merely because the name of the appellant is not appearing in the First Information Report pending the investigation it has no bearing, especially when the prosecuting agency is successful in pointing out to the Court by placing the gist of the CDR reports to show that the appellant was in constant touch with the co-accused and the tower location. The postmortem report shows that the deceased Rajesh Kirsan was very brutally murdered. The injuries are appearing on all parts of the body. As per the First Information Report, some of the co-accused even deprived the first informant to give water to her husband when he was demanding and shouting, “water water”. That shows the brutality on part of the accused persons. The accused persons thereafter tied the hands and legs of the deceased, who at the relevant time was in a serious injured condition, puts him in a dickey of four wheeler and took away 80 kilometers from the place of the incident. He was buried at Village Bampaboli (Soundad) jungle area, a nearby place of the resident of the present appellant. It is to be mentioned here that the dead body of Rajesh was discovered by the co-accused Rahul.

11] The learned Additional Public Prosecutor has submitted that after the investigation, chargesheet is filed before the Competent Court. However, since the appellant was not traceable, the chargesheet is filed against him under Section 299 of the Code of Criminal Procedure.

12] In view of the aforesaid, we are of the view that the custodial presence of the appellant is absolutely necessary not only for the recovery but also for further investigation which the Investigating Officer is entitled to conduct.

13] Conspectus of the aforesaid discussion leads us to pass the following order :

ORDER

i] The Appeal is dismissed.

ii] The order passed by the learned Additional Sessions Judge, Gondia dated 28/07/2021 in M.C.B.A. No. 167/2021 stands confirmed.

14] We place on record word of appreciation for Dr.
R.S. Sirpurkar.

JUDGE

JUDGE

Sumit