

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

CRIMINAL APPEAL NO. 515 OF 2020

Surendra S/o. Baluji Kale,
aged about 30 years, Occu.: Labour,
R/o. Chatrasal Nagar, Amravati.

.... **APPELLANT.**

// VERSUS //

1. State of Maharashtra,
through its Police Station
Officer, Tiwasa Police Station, Amravati
Rural, District : Amravati.
2. Sau. Vandana W/o.Babarao Dalal,
aged about 45 years, Occ. Household,
R/o. Shivaji Square, Tiwasa,
District : Amravati.

.... **RESPONDENTS.**

Shri Anil S. Mardikar, Senior Advocate a/b. Ms A.M.Kshirsagar & Shri R.S.Khemuka Advocates for Appellant.
Ms Mayuri Deshmukh, A.P.P. for Respondent No.1.
None for Respondent No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.
DATED : MARCH 04, 2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. **ADMIT.**

3. 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 Special Judge (Atrocity) and Additional Sessions Judge-4, Amravati in Criminal Bail Application No. 1411 of 2020 rejecting the application under Section 439 of the Code of Criminal Procedure filed by the appellant in relation to Crime No. 196 of 2020, registered with the respondent No.1-Police Station for the offences punishable under Section 302, 365, 504 read with Section 34 of the Indian Penal Code read with Sections 3 and 4/25 of the Arms Act and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The First Information Report is registered against the appellant and others with the accusations that the appellant along with other accused persons assaulted the victim. It is alleged that there was a pistol in the hands of one person and he pointed it out towards the victim. It is further alleged that Atul gave knife blows on left hand of the victim and other persons were assaulting the victim with fist and kick blows. The victim was taken to the hospital where he was declared dead by the Doctors.

5. The First Information Report came to be registered against the appellant and others. The appellant, therefore, filed Criminal Bail Application No. 1411 of 2020 under Section 439 of the Code of Criminal Procedure. The learned Special Judge, by impugned order, rejected the application of the appellant.

6. The appellant has, therefore, challenged rejection of the application under Section 439 of the Code of Criminal Procedure by filing present appeal. This Court, on 6th January 2021 issued notice to the respondents.

7. The office note shows that the respondent No.2 is served. In spite of service, the respondent No.2 has not appeared before this Court either personally or through Advocate.

8. We have carefully considered the allegations in the First Information Report, Injury Certificate, Statement of Witnesses produced on record by way of charge-sheet and the impugned order. On overall consideration of the material, it appears that the role assigned to the appellant is that the appellant assaulted deceased Ajay with fist blows.

9. Shri Anil Mardikar, learned Senior Advocate invited our attention to the statements of Pooja Babarao Dalal and Aarif Shafique Shah. On perusal of the said statements it appears that the name of the appellant is not referred in both the statements.

10. Ms Mayuri Deshmukh, learned A.P.P. invited our attention to the statement of Vandana Babarao Dalal-Complainant. On perusal of the said statement, it appears that there is no overt act attributed to the appellant and it is stated that the appellant was present during assault.

11. Investigation is complete. Chargesheet is filed. Prosecution has not stated that custodial interrogation of appellant is necessary. It is not pointed out by prosecution that appellant has criminal antecedents to his discredit. Having considered the material produced on record in the form of charge-sheet, we are satisfied that the appellant has made out the case for release of the appellant on bail, subject to conditions stated in the order.

7. We therefore, pass the following order:

- i) The impugned order dated 24/11/2020 passed by Special Judge (Atrocity) and Additional Sessions Judge-4, Amravati in Criminal Bail Application No. 1411 of 2020 is set aside.
- ii) The appellant shall be released on bail on furnishing cash security of Rupees One Lakh to be submitted before the learned trial Judge. In addition to the cash security, the appellant shall furnish two solvent sureties in the sum of Rupees Fifty Thousand each.

- iii) The appellant shall attend the proceedings before the learned trial Judge on each and every date unless exempted by the learned trial Judge.

The appeal is **allowed** in the above terms.

CRI.APPLN.NO.532 OF 2020.

In view of disposal of the Criminal Appeal the instant application praying for grant of time to file certified copy of order does not survive, hence, it is **disposed**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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