

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 263 OF 2022

Vishal s/o Bhujang Pofale @ Popale,
age: 21 years, Occ: Education,
R/o Sangavi (Kati), Tq. Tuljapur,
District Osmanabad.

Appellant

Versus

01 The State of Maharashtra,
through Police Station,
Tamalwadi, District Osmanabad.

02 Surekha w/o Sudhakar Shendge,
age: 44 years, Occ: Labour,
R/o Sangavi (Kati), Tq. Tuljapur,
District Osmanabad.

Respondents

Mr. S. J. Salunke, advocate for the appellant
Mr. S. D. Ghayal, APP for Respondent No.1-State.
Mr. N. V. Borse, advocate for Respondent No.2.

**CORAM : V.K.JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 29th April, 2022.

ORDER (Per Sandipkumar C. More, J.):

1 The present appellant i.e. original accused no.3 in Crime No. 195 of 2021, registered with Tamalwadi Police Station, Taluka Tulzapur, District Osmanabad, for the offences punishable under Sections 302, 307, 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3 (1) (r), (s) (w) & 3 (2)

(va) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, has preferred this appeal under Section 14-A (2) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order dated 18.02.2022, passed by the learned Special Judge, Osmanabad, below Exhibit-37 in Special (Atrocity) Case No. 120 of 2021. Under the impugned order, the learned Special Judge, Osmanabad, has rejected the prayer of the present appellant for releasing him on bail.

2 According to the prosecution, present Respondent No. 2 i.e. original informant lodged First Information Report against the present appellant and other co-accused alleging that her husband Sudhakar Shendge i.e. deceased in the instant crime had agreed to construct house of one Manohar Sakharam Popale at village Sangavi (Kati), Taluka Tuljapur, District Osmanabad and the said construction was in progress. Sudhakar Shendge had also constructed house of co-accused Parubai Popale about three years ago and amount of Rs.7000/- to Rs.8000/- was due from the appellant and co-accused. On 21.10.2021, at about 2.00 p.m. to 2.30 p.m., co-accused Parubai called Sudhakar on phone and invited him to her house. Thereafter, at about 2.45 p.m., a small

boy of the village came to the house of informant Surekha and told her that a quarrel was going on in between Sudhakar and accused persons in the present crime. When informant reached to the house of appellant, all the accused persons were abusing her husband Sudhakar. Accused were also telling Sudhakar not to construct house of Manohar Sakharam Popale as there was dispute going on in between them. At that time, when deceased Sudhakar demanded remaining amount from the accused persons, co-accused Parubai started abusing him in the name of his caste. At that time, present appellant as well as co-accused Akshay also threatened Sudhakar and co-accused Akshay lifted one spade ("khorya") lying nearby and hit it on the right side of the head of Sudhakar. As Sudhakar fell down, present appellant took the spade from the hands of co-accused Akshay and beat Sudhakar with it on abdomen and legs. Thereafter the appellant, co-accused Parubai and Akshay Popale beat Sudhakar with kicks and fists. As Sudhakar sustained bleeding injury, all the accused ran away from there. Sudhakar was taken to Government Hospital, Tulzapur, initially and thereafter to Civil Hospital, Solapur, however, he succumbed to the injuries while taking treatment in ICU at Civil Hospital, Solapur, on 03.11.2021.

3 Learned Counsel for the appellant submits that the investigation is now over and charge sheet is also submitted. He further submits that the present appellant had not given blow on any vital part of the body but the same was given by co-accused Akshay. So far as role of present appellant is concerned, there are allegations that he beat deceased Sudhakar with spade on abdomen as well as legs. Learned Counsel for the appellant submits that allegations in the First Information Report, in respect of the assault committed by the appellant, are not supported by the witnesses. There are contradictions between the versions of eye witnesses in respect of the said assault. Some of the witnesses have stated that the appellant beat Sudhakar only on non vital parts of the body, namely abdomen and legs, but some of the witnesses, even in their statements recorded under Section 164 of the Code of Criminal Procedure, have not stated anything about the active participation of the appellant in the crime. Learned Counsel for the appellant further submits that considering the role ascribed to the present appellant, no *prima facie* case under Section 302 read with Section 34 of the Indian Penal Code is made out against him. As such, he prayed that the appellant is entitled to be released on bail during the pendency of trial in Special (Atrocity) Case No. 120 of 2021.

4 On the contrary, learned Counsel for Respondent No.2 – informant strongly opposed the appeal on the ground that there are direct allegations against the present appellant in the First Information Report itself. Moreover, the eye witnesses have also stated as to how brutally the appellant beat Sudhakar with the help of spade on the abdomen and legs. Learned Counsel for Respondent No.2 further submits that all the accused, in the present crime, in furtherance of their common intention, have beaten Sudhakar to his death and, therefore, the appeal of the present appellant is liable to be rejected.

5 On the other hand, learned A. P. P. has also opposed the present appeal by arguing the case on the similar lines of learned Counsel for Respondent No.2.

6 We have considered the submissions advanced by the learned Counsel for rival parties. We have also gone through the charge sheet and police papers along with the impugned order of rejection of bail dated 18.02.2022, passed by the learned trial Court.

7 On perusal of the impugned order, it appears that the learned Special Judge, Osmanabad, has rejected the prayer for bail of the present appellant observing that the appellant had assaulted deceased Sudhakar by spade and if he is released on bail, then there might be possibility of tampering with the prosecution evidence, pressurizing prosecution witnesses and absconding of the appellant. However, on perusal of the First Information Report itself, it is evident that the present appellant allegedly beat Sudhakar with the help of spade on his stomach and legs. In fact, the fatal blow was given by co-accused Akshay Popale on the head of deceased Sudhakar. The *post mortem* report clearly indicates that Sudhakar died due to head injury. Further, though there are allegations of beating deceased with the help of spade against the present appellant, but on perusal of the *post mortem* notes as well as the initial injury certificate of deceased Sudhakar, it is clearly evident that except abrasion of 2 cm x 2 cm on the right leg of the deceased, there were no injuries on his abdomen. The *post mortem* report clearly indicates that Sudhakar died due to the head injury and he was also Covid-19 positive. It is also important to note that deceased Sudhakar did not die immediately after the assault, but he died on 03.11.2021, while taking treatment i.e. after 13/14 days.

8 Moreover, on going through the charge sheet, eye witness Yashwant Balasaheb Patil, though supported the version of Respondent No.2-informant in respect of the role played by present appellant, but the informant, in her statement recorded under Section 164 of the Code of Criminal Procedure, has stated a different story that the present appellant was found beating her husband with the help of stick on legs. On the other hand, another witness Abhishek Raju Shendge, in his statement recorded under Section 164 of the Code of Criminal Procedure, remained silent as regards the assault on the deceased by the present appellant, which is contrary to his earlier statement recorded under Section 161 of the Code of Criminal Procedure. Even otherwise also, the statements of witness Abhishek Shendge are based on the information received by others in respect of the crime. Thus, it is apparent from the record that the vital blow was given by co-accused Akshay. Further, there are material contradictions amongst the versions of witnesses as regards the role ascribed to the present appellant.

9 So far as aspect of common intention is concerned, it is the look out of the trial Court. At this juncture, there is

possibility of scaling down the offence against this appellant under Section 302 of the Indian Penal Code to some other lesser offence, during the course of trial.

10 Thus, considering all these aspects and considering the role of the present appellant in the crime, we are inclined to release him on bail during the pendency of trial of Special (Atrocity) Case No. 120 of 2021, pending on the file of Special Judge (Atrocity), Osmanabad, by imposing stringent conditions.

11 Learned Counsel for the appellant submits that the appellant, if released on bail, is ready to stay away from the vicinity of village Sangavi (Kati), Taluka Tuljapur, District Osmanabad, till conclusion of trial.

12 Hence, we proceed to pass the following order:

(A) Criminal Appeal No. 263 of 2022 is hereby allowed.

(B) The order dated 18.02.2022, passed by the learned Special Judge, Osmanabad, below Exhibit-37 in Special (Atrocity) Case No. 120 of 2021, thereby refusing to release the present appellant on bail, is hereby set aside.

(C) The appellant/original accused no.3 Vishal Bhujang Pofale @ Popale is hereby released on bail on execution of P. R. bond of Rs. 20,000/- (Rs. Twenty Thousand) with one or more solvent sureties in the like amount in connection with Crime No.195 of 2021 dated 22.10.2021, registered with Tamalwadi Police Station, Taluka Tuljapur, District Osmanabad, for the offences punishable under Sections 302, 307, 323, 324, 504, 506 read with Section 34 of the Indian Penal Code and under Sections 3 (1) (r), (s), (w) & 3 (2) (va) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015; and also in connection with Special (Atrocity) Case No. 1201/2021, pending in the Court of Special Judge, Osmanabad, on the following conditions:

(i) The appellant shall not enter village Sangavi (Kati), Taluka Tuljapur, District Osmanabad, till conclusion of the trial of Special (Atrocity) Case No. 1201/2021, pending in the Court of Special Judge, Osmanabad.

(ii) The appellant shall not, in any manner, tamper with the prosecution evidence or pressurize the prosecution witnesses.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

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