

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

916 CRIMINAL APPEAL NO.420 OF 2022

SANJAY SAHEBRAO @ RAJEBHAU SHINDE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Appellants : Mr. Salunke Sudarshan J.
APP for Respondent No.1-State : Mr. S. P. Deshmukh
Advocate for Respondent No.2:Mr.N.D.Jaiswal, M.B.Jain, Shinde A.A.,
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 30-06-2022

ORDER JUDGMENT:

1. Heard both sides.
2. Since arguable points are made, the appeal is **admitted**.
3. By consent, the appeal is taken up for final disposal.
4. Appellants have filed present appeal under Section 14-A (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act challenging the rejection of their Cri.Bail Appln. No. 176 of 2022 filed under Section 439 of the Code of Criminal Procedure, by learned Special Judge under Atrocities Act, Majalgaon, District Beed, on 04-06-2022.
5. Heard learned Advocate Mr. S. J. Salunke for appellants, learned

APP Mr. S. P. Deshmukh For respondent No.1-State, and learned Advocate Mr. N. D. Jaiswal for respondent No.2.

6. At the outset, it is to be noted that though the offence under Section 3 (2) (va) of the Atrocities Act is involved in this case, in view of the fact that the appellants were arrested, there is no question of bar under Section 18 of the Atrocities Act. The said bar is applicable only in respect of an application under Section 438 of Cr.P.C.

7. The FIR has been lodged by respondent No.2 who is the widow of deceased Bhagwan. According to her, she as well as her husband had taken advance of Rs.2 lakh towards sugarcane cutting from one Sanjay Shinde i.e. appellant No.1. According to her, they both had worked with appellant No.1 since Diwali of 2021 till two months prior to the FIR dated 13-05-2022. According to her, there after there was dispute in respect of the payment, and therefore, she as well as her husband went back to their village Borgaon, Taluka Majalgaon. According to her at about 08.00 a.m. on 10-05-2022 the appellants as well as one Gotu Shinde and Asaram Shinde along with two other unknown persons went to her house and started saying that amount is outstanding from the informant and her husband, and therefore,

that amount should be returned. Informant and her husband told them that they should assess the account, and if at all the amount is remaining, that would be given within four days. She says that she as well as her husband were assaulted by slaps and fists and the accused persons insisted that the amount should be given to them. She further says that her brother-in-law Abhiman separated them, but her husband was forcibly taken on motorcycle by the appellants to Jaigaon Taluka Parli. Thereafter, she says that at about 08.00 a.m. on 12-05-2022 she was informed by one Sanjay Shinde that her husband has committed suicide at Jaigaon in the iron sheet shed in the field of one Gotu Asaram Shinde. She then states that she went to hospital where the dead body of her husband was taken for postmortem and then she has lodged the report which came to be registered around 18.24 hours on 13-05-2022.

8. The informant in her FIR has not stated as to why she had not lodged any report when her husband was forcibly taken by the accused persons. At this stage offence under Section 365 of IPC has been added which provides punishment for kidnapping or abducting with intent secretly and wrongfully to confine a person. She has even stated about the presence of her bother-in-law Abhiman. He

has also not lodged any report when Bhagwan was allegedly abducted. For two days there is absolutely no action on the part of the informant and then she had received, per her own story, the intimation about death of her husband by hanging.

9. It was specifically asked to the learned APP as to whether the police papers do disclose the intention of the prosecution to invoke Section 302 of IPC, but then he says that he has not received any instructions in that respect.

10. The situation that has been stated in the FIR now discloses that when there was alleged abduction around 08.00 a.m. of 10-05-2022 no action was taken by the informant and till 08.00 a.m. of 12-05-2022 she had no knowledge as to where her husband is. Therefore, whether the ingredients of Section 306 of IPC i.e. abetment to commit suicide can be said to be fulfilling, is also a question. No doubt, there appears to be certain transaction between the informant, her husband on one part and the appellants on the other part. But when the financial transaction was entered into by the appellants with full knowledge that Bhagwan was member of a particular caste, whether on that count only he could have been driven to commit suicide, would be the matter for determination at

the time of trial.

11. The appellants have undergone the necessary custody and it appears that the substantial part of the investigation is over. Statement of Abhiman has been recorded. He is also silent as to why he has not lodged any report about the abduction of his brother. The post mortem report shows only one injury i.e. ligature mark. The probable cause of death has been given as "death due to hanging." When no other injury has been noted on the person of the deceased, prima facie we can say that he was not assaulted by anybody. The only fact that appears to be worth considering is the place where the dead body was found that is said to be the field of one Gotu Shinde. He is not before this Court and at this stage there appears to be no investigation as to how deceased could have reached till that place. Therefore, taking into consideration all these aspects, the further custody of the appellants is not required, and therefore, they deserves to be released on bail.

12. The learned Special Judge has not considered all the necessary facts and it appears that he got swayed away with the previous offences those were registered and he went on to observe that there was a foul play. But whether that foul play was ventilated through a

legal proceeding, is a question and without proper evidence that could not have been connected to the facts stated in the FIR. The order passed by the learned Special Judge deserve to be set aside. Hence, following order.

ORDER

- 1) Appeal stands allowed.
- 2) The order passed by the learned Special Judge, Majalgaon, District Beed, in Criminal Bail application No.176 of 2022 dated 04-06-2022 stands set aside. The said application stands allowed.
- 3) Applicant/accused No.1 Sanjay s/o Sahebrao @ Rajebhau Shinde and appellant/accused No.2 Vijaykumar s/o Maruti Gadade, arrested in connection with Crime No.73 of 2022, registered with Sirsala Police Station, Taluka Parli V., District Beed, be released on P.R. of Rs.30,000/- each and two solvent sureties of Rs.15,000/- each.
- 4) Appellants/accused to attend Police Station, Majalgaon Rural, on every Thursday between 10.00 a.m. to 02.00 p.m till filing of the charge-sheet.
- 5) The appellants/accused shall not tamper with the evidence of the prosecution in any manner.
- 6) They shall not indulge in any criminal activity.
- 7) Bail before Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.