

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

CRIMINAL APEAL NO.771 OF 2022

**Shivram S/o Narendra Tupe
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Mr. S.G. Laddha, Advocate for the Appellant.
Mr. R.V. Desalkar, APP for Respondent – State.
Mr. A.L. Kanade & S.S. Nade for Respondent No. 2.

...
**CORAM : R.G. AVACHAT &
R.M. JOSHI, JJ**

DATE : NOVEMBER 11, 2022.

ORDER (PER R.M. JOSHI, J)

1. This appeal is filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Act of 1989') read with Section 439 of Code of Criminal Procedure, 1973 for seeking bail in connection with C.R. No. 195 of 2022 registered with CIDCO Police Station for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B, 201, 114 of Indian Penal Code, 1860 and Section 3(2)(v) of the Act of 1989.

2. On 20th April, 2022 an incident occurred wherein Manoj was assaulted and he succumbed to the injuries caused in the said assault. As per the statement of eye witness Shubham Navture, on that day at about 03.00 pm Satish and five other persons came to his house making inquiry about

the residence of Manoj. When he questioned to them about the purpose, he was told that Manoj has broken the lock and committed theft. He therefore, along with five persons went on two wheelers to the house of Manoj. From there Manoj was taken to Meghawale auditorium wherein he was assaulted with wooden logs by alleging against him of commission of theft by tying his hands and legs. It is further stated by this witness that Sunny @ Rohan and Shubham Tupe (Appellant) came to the spot and Shubham was recording at the incidence of assault in his mobile phone, at the instance of Sunny @ Rohan.

3. Investigation into this crime is complete with filing of the charge-sheet and on committal, Sessions Case no. 317/2022 is being registered. Present Appeal is filed by the Appellant as his application for grant of bail was rejected by the trial Court.

4. Learned Advocate for the Appellant submitted that the alleged role of present appellant complete differs from the role attributed to the co-accused in the incident of assault. According to him, Appellant was not present at the spot of the incident since the time of its commencement and therefore, he cannot be said to be part of the alleged unlawful assembly. It is also argued that except alleged video-graphing of the incident there no other overt-act in assault has been alleged against him. According to him, Appellant is of young age with no criminal antecedents and since the

investigation into the crime is already completed, he be enlarged on bail.

5. Learned APP opposed the said submissions by referring to the statements on record in particular, statement of Shubham Navture to canvass that the role of Appellant can be seen from his participation in the crime by recording the video of the incident at the instance of the co-accused. He further submitted that the statement of the co-accused and subsequent recovery of the clothes of the deceased indicates that present Appellant also participated in destroying the evidence by concealing the clothes of deceased. All these facts according to him are sufficient to decline bail.

6. Learned Advocate for Respondent No.2/informant strenuously opposed grant of bail with the submissions that there is material on record to show that the present Appellant was party to the conspiracy as well as had common object of not only assaulting the deceased to death but also to create terror. He relied upon and drew attention of this Court to the videos of the incident circulated which according to him show that the present Appellant was found instigating co-accused for assault to be caused on the deceased. He also submitted that the intention of assailants to videograph the incident was to create terror amongst members of particular caste. Attention of this Court is drawn to the complaint lodged by the deceased's widow about the she being pressurized to withdraw the case.

7. *Prima facie* perusal of charge-sheet shows that the incident in question has occurred on 20th April, 2022 and it appears that deceased was assaulted by assailants with wooden logs on the count of alleged theft committed by him. His hands and legs were tied while he was beaten. No doubt the assault caused is merciless, however, as far as present Appellant is concerned, from the statement of Shubham Navture it is clear that when co-accused went to the house of deceased he did not accompany them nor he was present at the spot when the incident of assault commenced at Meghawale auditorium. As per the version of this witness, Appellant came to the spot with co-accused Sunny @ Rohan but he does not claim any other overt-act in the assault against the Appellant except recording of video of the incident.

8. With the assistance of learned Advocate for Respondent No. 2 this Court has perused the videos in question. In those videos present Appellant is not seen to have done any overt-act in causing assault on the deceased. Further there is nothing *prima facie* to show that he instigated the assault and in fact, at one point of time he was found saying to the assailants not to assault. *Prima facie* consideration of this material on record supports Appellant's case that he was not sharing common object to cause assault on the deceased.

9. Since it was argued that the intention of the assailants was also

to create terror amongst particular caste by video-graphing the incident of assault. A specific query was made to learned APP as well as learned Advocate for Respondent No. 2 as to whether the present Appellant has circulated the video recorded. On instructions from the investigating officer, learned APP made statement about their being no evidence to show circulation of any such video by the Appellant herein. In absence of any circulation of video by Appellant the allegation about the purpose of the same to create terror does not deserve acceptance at this stage.

10. *Prima facie* consideration of material on record shows that the Appellant has not participated in actual assault caused on the deceased. As he came to the spot later owing to acquaintance with one of co-accused it cannot be said that he was a party of unlawful assembly having common object since beginning. Similarly, since he is not found instigating assailants to cause assault he cannot be said to have shared said object even at later point of time. On the contrary, at one moment he was found saying not to assault. In these circumstances, after conclusion of investigation and filing of the charge-sheet his further detention is unwarranted.

11. No doubt Respondent No.2 has placed on record N.C. complaint lodged with concerned police station indicating threat issued to widow of deceased but the said complaint is lodged against unknown persons and cannot be attributed to the Appellant. However, considering the

apprehension of Respondent No.2 of possibility of pressurizing of the witnesses, appropriate conditions needs to be imposed while enlarging Appellant on bail.

12. It is clarified that the aforesaid observations are made only on *prima facie* consideration of material on record for decision of this appeal and the same shall not have bearing on trial.

13. In view of the above, the Appeal succeeds. Hence the following order:

ORDER

- (i) Criminal Appeal is allowed.
- (ii) Impugned order dated 06th October, 2022 passed by Special Judge under the SC ST (POA) Act, Aurangabad in Sessions Case No. 317/2022 is quashed and set aside.
- (iii) Application (Exh.8) filed in S.C. No. 317/2022 stands allowed. Appellant – Shivram S/o Narendra Tupe be released on bail on furnishing PR. bond in the sum of Rs. 15,000/- (Rupees Fifteen Thousand only) with one surety in the like amount, in connection with F.I.R. bearing C.R. No. 195 of 2022 registered with CIDCO Police Station for the offences punishable under Sections 302, 143, 147, 148, 149, 120-B, 201, 114 of Indian Penal Code, 1860 and Section 3(2)(v) of the Act of 1989, on following conditions:
 - (a) The appellant not to enter jurisdiction of Aurangabad City

for the period of one year from today.

- (b) The appellant shall not tamper with the prosecution evidence.
- (c) The appellant not to contact and pressurize the prosecution witnesses in any manner whatsoever.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

Malani