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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR
CRIMINAL APPEAL NO.73 OF 2022

Manoj Fulsing Rathod,
Aged about 30 years, occupation labour,
R/o Vithala, Digras, taluka Digras, District Yavatmal. **Appellant.**

:: V E R S U S ::

1. The State of Maharashtra,
Through Police Station Officer, Police
Station-Arni, taluka Arni, district Yavatmal.

2. Datta Digambar Dhoke,
Age about 29 years, occupation labor,
R/o Pandhara, taluka Ner, District Yavatmal. **Respondents.**

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Shri S.G.Varshani, Counsel for the Appellant.
Shri Shahrukh Shah, Counsel for Respondent No.2.
Mrs.M.A.Barabde, Additional Public Prosecutor for Respondent
No.1/State.

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CORAM : V.M.DESHPANDE & AMIT B.BORKAR, JJ.
DATE : APRIL 05, 2022

ORAL JUDGMENT (Per : V.M.Deshpande, J.)

1. Heard learned counsel Shri S.G.Varshani for the appellant,
learned counsel Shri Shahrukh Shah for respondent No.2, and learned
Additional Public Prosecutor Mrs.M.A.Barabde for the State. **Admit.**
Heard finally by consent of learned counsel appearing for respective
parties.

2. By the present appeal, under Section 14-A of the
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities)

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Act, 1989, the appellant is challenging order dated 21.1.2022 passed by learned Additional Sessions Judge, Darwaha in Criminal Bail Application No.15/2022 whereby learned Judge rejected application under Section 439 of the Code of Criminal Procedure.

3. Learned counsel for the appellant submitted that there is a delay in lodging of First Information Report. He also submitted that statements of eyewitnesses were recorded belatedly. He also submitted that Postmortem Report clearly absolves the appellant. He relied on a decision of the Honourable Apex Court in the case of Dinubhai Boghabhai Solanki vs. State of Gujarat and ors, reported at **2014 ALL MR (Cri) 1132 (S.C.)** and submitted that the present appeal be allowed.

4. *Per contra*, learned Additional Public Prosecutor for the State vehemently argued that the appellant is seen assaulting Purushottam Digambar Dhoke and, therefore, at this stage, there is a sufficient material to reject the appeal in view of fact that the offence committed is very serious one.

5. Learned counsel Shri Shahrukh Shah for respondent No.2 supported learned Additional Public Prosecutor for the State.

6. On 15.11.2021, the appellant came to be arrested in connection with Crime No.901/2021 registered with Arni Police Station,

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Yavatmal for offences punishable under Sections 302, 201, and 506 read with Section 34 of the Indian Penal Code and under Section 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7. Deceased is one Purushottam Digambar Dhoke. Incident in question occurred on 12.9.2021 and the First Information Report was lodged on 28.10.2021. Taking a thread of the same, it is a submission of learned counsel for the appellant that in view of the delay occurred in lodging of the First Information Report, the appellant needs to be released on bail. The First Information Report is lodged by Police Head Constable Arun Sitaram Pawar. From the First Information Report itself, it is clear that initially a merg was registered with Arni Police Station, Yavatmal and during enquiry of the merg, it was revealed to Investigating Officer a role of the present appellant and, therefore, an offence was registered at the behest of the State.

It is worth to note that initially a missing report was lodged by wife of the deceased.

8. Be that as it may, delay in lodging of First Information Report by itself is not a reason to discard the prosecution case. There will be an opportunity on the part of the prosecution to explain delay properly during trial. It is altogether a different aspect as to whether

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explanation will be accepted or not. However, an opportunity cannot be denied to the prosecution to explain delay.

In this view of the matter, the first submission of learned counsel for the appellant that the appellant is entitled to be released on bail due to delay in lodging of the First Information Report is rejected.

9. Insofar as recording of statements of eyewitnesses belatedly is concerned, law is now well settled that an opportunity has to be given to Investigating Officer investigating the crime while is in witness box to explain the delay. At the threshold, merely because statements of eyewitnesses are recorded belatedly that cannot be a reason to grant the bail.

In this view of the matter, the second submission is also rejected.

10. We have perused statements of eyewitnesses and they are one Santosh Vithoba Pardhi and Rameshwar Prem Rathod. These two persons along with the appellant and Purushottam, the deceased, and Santosh Rathod, were having not only fish party in an agricultural field but also liquor party. Here, worth noting that eyewitness Rameshwar specifically sated that he was neither part and parcel of fish party nor of liquor party because he did not eat non-veg and also is not a drinker.

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His statement shows that he along with Santosh Pardhi went towards a dam and while returning, he noticed a quarrel between Santosh Rathod, Manoj, the appellant, and Purushottam. In the said quarrel, according to the said eyewitness, the present appellant gave a blow on back of Purushottam and, thereafter, he along with other co-accused threw him inside a well.

Similar is a statement of another eyewitness.

11. Looking to a specific role attributed by these two eyewitnesses against the appellant, we are of view that the case cited *supra* is not at all applicable to the present case. Resultantly, we pass following order:-

ORDER

(1) The criminal appeal is **dismissed** and disposed.

(2) Order dated 21.1.2022 passed by learned Additional Sessions Judge, Darwha in Criminal Bail Application No.15/2022 stands confirmed.

JUDGE**JUDGE**

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WANKHEDE

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