

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

CRIMINAL APPEAL NO. 142 OF 2022.

Niraj Omprakash Waghmare,
Aged about 33 years, Occu.: Business,
R/o. Netaji Nagar, Yavatmal,
Tq. and Dist. Yavatmal

.... **APPELLANT**
(IN JAIL)

----- **VERSUS** -----

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Awadhootwadi,
Yavatmal, Tq. and Dist. Yavatmal.
2. Nikhat Wasim Pathan,
Aged about – 27 years,
Occu. - Housewife,
R/o. Netaji Nagar, Yavatmal,
Tq. and Dist. Yavatmal.
3. Smt. Jijabai Tulshiram Yerme,
Age – 56 years, Occ. Labour,
R/o. Netaji nagar, Yaotmal.

.... **RESPONDENTS**

Shri S. P. Dharmadhikar, Sr. Advocate with Shri A. M. Jaltare, Advocate for the Appellant.

Shri S. M. Ghodeswar, A.P.P for the Respondent No.1/State.

Shri Vivek Awchat, Advocate for the Respondent Nos.2 and 3.

CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.

DATE : 12.04.2022.

ORAL JUDGMENT : [PER : V. M. DESHPANDE, J.]

1. Heard Shri S. P. Dharmadhikar, learned Senior Advocate for the appellant, Shri S. M. Ghodeswar, learned A.P.P for the State and Shri Vivek Awachat, learned Advocate for the respondent No.2.

2. **ADMIT.**

3. Taken up for final hearing.

4. This is an appeal under Section 14-A of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 filed by the appellant since the application filed on behalf of the present appellant for bail was rejected by the learned Additional Sessions Judge, Yavatmal on 03.02.2022.

5. In this case, the investigating agency has already completed the entire investigation and charge-sheet is already filed. The appellant is accused No.6 in the charge-sheet. Date of the incident is 12.10.2021 in the night. The report is lodged by the wife of one of the deceased by name Wasim Pathan, another deceased is Umesh Yermé. From the First Information Report lodged by the Nikhat Pathan, it is crystal clear that she is not an eye witness.

6. It is admittedly clear that from the present appellant there is no recovery of any weapon nor the investigating agency has conducted the test identification parade qua the appellant inasmuch as from the statement of Asif Khan Rashid Khan Pathan, who is the witness, did state that when he was returning to Yavatmal he noticed that two

persons are lying in injured condition near Pallavi Lawn and four persons were running away on the motorcycle and out of that he has identified Sheikh Raheman and he claimed so far as others are concerned, he knows them by their face. However, no test identification parade was conducted insofar as the present appellant is concerned. Insofar as the other eye witness Sayyad Naushad Ali, he has specifically attributed the role of assault to one Raheman Sheikh.

7. According to the learned A.P.P and the learned counsel for the victim, though there is no actual assault at the hands of the present appellant, he is one of the abettor and conspirator. Whether the appellant was an abettor and the conspirator will have to be proved by the prosecution during the course of the trial. At this stage, the Court has to see whether the custodial continuance of the appellant is necessary or not. Since the charge-sheet is already filed, in which there is no role attributed to the present appellant that he has actually assaulted on any of the deceased, in our view, this is a fit case wherein the appellant, who is languishing in jail, should be released on bail. Resultantly, we pass the following order :

- i] The appeal is allowed.

- ii] The order passed by the learned Additional Sessions Judge, Yavatmal dated 03.02.2022 below Exh.4 in Special Case No. 2/2022 rejecting the application for bail filed on behalf of the appellant, is set aside.
- iii] The appellant Niraj Omprakash Waghmare, who is in jail be released on bail on he executing P. R. Bond of Rs.5000.- (Rs. Five Thousand Only) with one solvent surety in the like amount.
- iv] The appellant is directed to attend the Police Station, Awadhutwadi once in a week preferably on every Wednesday in between 3.00 p.m. to 5.00 p.m. till the culmination of the trial.
- v] The appellant is directed not to give any type of threats to any of the prosecution witnesses. If it is found that the appellant is indulging in the activities which are prejudicial to the prosecution case, it will be open for the prosecution to file application for cancellation of bail.

JUDGE

JUDGE