

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

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CRIMINAL APPEAL NO. 465/2022

Vandeo s/o Natthuji Jawade
Aged about 45 years, occu: Labour
R/o Siddarth Nagar, Wardha
Tal. & Dist. Wardha

..Appellant

versus

1) State of Maharashtra
Through PSO Wardha City
Dist.Wardha.

2) Siddharth s/o Sheshro Deotale
R/o Near Sathe Kirana Store
Anand nagar, Wardha.

..Respondents

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Mr.Amol M. Jaltare, Advocate for the appellant
Mr.T.A. Mirza, APP for the respondent 1

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CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ
DATED : 22nd September, 2022.

JUDGMENT: (Per: ANIL L.PANSARE, J.)

Admit. Heard finally.

2. The appellant has assailed the order dated 24th
February 2022 passed by learned Judge, Special Court,
Wardha in Special Case No.111/2021, whereby the

application filed by the appellant for releasing him on bail has been rejected. The appellant is facing trial for the offence punishable under sections 302, 201, 120(b), 212 read with Section 34 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. According to the prosecution, the date of the incident is between 27th July 2021 and 28th July 2021. The FIR has been lodged on 28th July 2021 by one Siddharth Sheshraj Deotale. It is the case of the prosecution that on 27th July 2021 at about 6.00 pm, the nephew Kisan Deotale of the informant left his house with empty water can but did not return till 8.00 pm. The informant tried to contact Kisan on phone but he did not pick up his phone. The informant then started searching Kisan but could not found him and, therefore, the report came to be lodged on 27th July 2021 stating that his nephew Kisan Devtale is missing. On 28th July 2021 Kisan was found dead lying near the gutter abutting the road Siddarth nagar Chitod Road power house. It appears

from the case of the prosecution that Anwar Sheikh/ (accused no.1) is a friend of appellant and developed a liking towards appellant's daughter Anjali. However, the marriage of appellant's daughter was fixed with Kisan. The accused no.1- Anwar was annoyed with the said fact and, therefore, he has eliminated Kisan.

3. The reply filed by the respondent 1-State would indicate that there is no direct evidence against the appellant showing his involvement in the crime. However the role attributed to the appellant is that, on the date of the incident Kisan was called at the house of the appellant and that his presence in the house was informed to the accused no.1 by the appellant. It is thus the case of the prosecution that the appellant has shared location of Kisan with accused no.1 who, with the assistance of the accused no.2 has eliminated Kisan.

4. The evidence, according to learned Special Judge, is overwhelming and, therefore, the application for bail filed by the appellant came to be rejected.

5. We are unable to uphold such a finding. The evidence collected against the appellant if is to be tested on the touchstone of concept of personal liberty as enshrined under Article 21 of the Constitution of India, we find that on such a evidence the personal liberty ought not to be infringed. It is so because, even if it is to be presumed that appellant has shared the location of deceased Kisan, there is nothing against the appellant to show that the location was shared to assist accused no.1 to eliminate Kisan. Neither is there evidence of common intention nor is there any evidence of conspiracy between the three accused who have allegedly committed the crime. We are conscious of the fact that there is seldom a direct evidence of conspiracy and that the inference is to be gathered from the attending circumstances of commission of crime. However, considering the entire material against the appellant, barring the theory of showing location there is nothing to indicate the complicity of appellant with the crime.

6. In our view, the learned Special Judge failed to

consider the evidence collected by the prosecution against the appellant in the manner he ought to have. The order is therefore not sustainable in law.

7. So far as the offence punishable u/s. 3(2)(v) of the Atrocities Act, it is not the case of the prosecution that the offence in question has been committed on the ground of deceased belonging to 'Boudha' Scheduled Caste. The Hon'ble Supreme Court in the case of Khuman Singh vs. State of Madhya Pradesh¹ has held that in a case of applicability of Section 3 (2)(v) of the Atrocities Act the fact that the deceased belonging to Scheduled Tribe would not be enough to inflict enhanced punishment. The prosecution has to establish that the offence has been committed only because the victim was belonging to Scheduled Caste or Scheduled Tribe, which is not even the case of prosecution. Therefore, the bail cannot be rejected on this count as well.

8. For the reasons aforesaid, in our view, the appellant is entitled to be released on bail. Hence, we proceed to pass the following order:-

1 (2020) 18 SCC 763

ORDER:

- (i) Criminal Appeal No. 465/2022 is allowed.
- (ii) The order dated 24th February, 2022 rejecting the bail Application passed by learned Judge, Special Court, Wardha is quashed and set aside.
- (iii) The appellant/accused be released on bail on his furnishing a PR bond in the sum of ₹ 25,000/- (Rupees twenty five thousand) with one surety in the like amount, on the conditions that :
 - (a) During pendency of the trial, the appellant shall not tamper with the prosecution evidence and shall not pressurize or threaten the prosecution witnesses.
 - (b) The appellant shall furnish his permanent address and/or temporary address, if any, and contact details to the Investigating Officer.
 - (c) The appellant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so

as to dissuade him from disclosing such facts to the Court.

(d) The appellant shall attend the court proceedings on every date/s unless expressly exempted by the trial Court.

9. Criminal Appeal stands disposed of.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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