

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

CRIMINAL APPEAL NO. 445 OF 2022.

APPELLANTS :

1.Rajat @ Chintu s/o Dindayal Sonekar,
Aged about 24 years, Occupation – Labour,
resident of Near Nisha Vidlaya, Rajguru
Ward, Bhandara, Tahsil and District
Bhandara.

2.Purushottam s/o Damodhar Mahakalkar,
Aged about 23 years, Occupation – Labour,
resident of Near Radhakrushna Mandir,
Krushna Ward, Bhandara, Tahsil and
District Bhandara.

VERSUS

RESPONDENTS :

1.The State of Maharashtra, through Police
Station Officer, Police Station, Bhandara,
District Bhandara.

2.Karan s/o Ramesh Barapatre, Aged about
18 years, resident of in house of Hament
Ramteke, resident of Dr. Ambedkar Ward,
Near Nisha School, Bhandara.

S/Shri V.D. Muley and R.R.Vyas, Advocates for Appellants.
Shri A.A. Madiwale, A.P.P for Respondent No.1.
Respondent No.2 – Served.

**CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : OCTOBER 14, 2022.

ORAL JUDGMENT : (PER VINAY JOSHI, J)

Though served, respondent no.2 has chosen not to appear in the matter. Considering the controversy involved in the matter and by consent of the learned Counsel present for the parties, the appeal is heard and taken up for final disposal at the stage of admission.

Admit.

2. Challenge in this appeal under Section 14[A][2] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as “the Atrocities Act” for short), is to the orders passed on Exhs.4 and 5 in Special Atrocities Case No.22/2022 dated 10.03.2022, by which the regular bail application filed by appellants have been rejected. The learned Counsel appearing for appellants would submit that besides mere presence on the spot, nothing has been brought on record against

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the accused. The allegation of assault by knife is against co-accused. There is no recovery of weapon at the instance of the accused. It is submitted that the learned trial Court has not considered this aspect, but, mechanically rejected the application for bail.

3. The State has resisted the appeal by contending that there are consistent statements of eye witnesses showing the complicity of accused. Wooden stick used in the offence has been seized at the instance of the appellant – Purushottam [accused no.4]. Medical officer has answered the query stating that there is possibility of use of the seized stick in causing injury on the person of the deceased. Moreover, it is submitted that appellants are residing in the same locality and therefore, there are high chances of pressurizing the eye witnesses.

4. At the instance of a report lodged by friend of the deceased namely – Karan Barapatre, a crime has been registered bearing Crime No.440/2021 with the police station Bhandara on 13.12.2021. It is informants case that on 12.12.2021, in the

evening around 7 p.m., he was proceeding along with the deceased Mahendo by riding on a bike. While they were passing from side of the house of appellant Rajat [accused no.3], at that time appellant Rajat, co-accused Rajju, Umesh and one unknown person caused them to fall from the bike. Immediately those persons started assaulting, in which co-accused Umesh dealt knife blow on the person of the deceased Mahendo, whilst the unknown person, probably lateron named as appellant no.2 – Purushottam, gave stick blow at the leg of the informant Karan. This was the initial version of the prosecution as revealed from the contents of the first information report. On the following day of the occurrence, supplementary statement of informant has been recorded in which he reiterated the same story, however, stated name of unknown assailant as appellant no.2 Amit @ Purushottam. Again after 20 days i.e. on 05.01.2022, another supplementary statement of informant has been recorded, wherein he has asserted earlier contentions, added that after initial incident of assault, all 4 assailants again caught hold the deceased Mahendo and beated him by fist-blows, kicks and knife.

5. The police paper indicates that there is one another eye witness to the occurrence, who is mother of the informant. She in her statement recorded on 05.01.2022 stated in consonance with the second supplementary statement of her son [informant] recorded on 05.01.2022. Precisely, she stated about infliction of knife blows by co-accused Umesh and assault by stick to the injured informant by appellant Purusottam. Besides that she has also added further incident as stated by her son.

6. The learned Counsel for appellants would submit that so far as the appellant Rajat [accused no.3] is concerned, besides mere presence, no role is assigned to him in initial and first supplementary statement. After 20 days, in a generalized manner, it has been stated that all of them have also assaulted. As regards the appellant Purushottam [accused no.4] is concerned, the role assigned to him is of giving stick blow to the informant and not to the deceased.

7. Prima facie, it reveals that the subsequent addition of story of assault by all of them by fists-blows, kicks and knife

appears to be after 20 days from the date of occurrence. Moreover, the medical report prima facie does not support the additions, since there is only one stab injury on the person of the deceased. Moreover, the injury certificate of the informant shows that there is only one injury at ankle, which is a blunt trauma.

8. Since the learned A.P.P. has submitted that there are eye witnesses to the incident, we have gone through the evidence of both the eye witnesses i.e. the informant and his mother, who has not specified the role of the present appellants with which we have dealt above. The learned A.P.P. took us through the seizure panchnama under which the stick was seized from the appellant Purushottam. However, the said seizure was not in pursuance of the information given by the accused, but, it was produced by Purushottam himself. Besides that the version of eye witnesses is restricted to the extent that Purushottam gave stick blow to the injured and not to the deceased.

9. Already the police have completed investigation and charge-sheet has been filed. Having regard to the nature of

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evidence, it is not a fit case to detain the accused for longer period, as the trial will take its own time. Though the learned A.P.P. has pointed out one antecedent against both appellants, however, that isolated registration of Crime under Section 324 of the Indian Penal Code is not capable enough to deprive liberty of appellants. Having regard to the above facts, the impugned order of rejection of bail is unsustainable in the eyes of law. This is a fit case to use the judicial discretion in releasing the appellants on bail. Needless to mention that the above observations are made only for the purpose of deciding the present appeal, which will have no implication while deciding the matter on merits. In view of that, following order is passed.

ORDER.

- (i) Criminal Appeal is allowed.
- (ii) The impugned order dated 10.03.2022 passed by the Additional Special Judge, Bhandara below Exhs. 4 and 5 in Special Atrocities Criminal Case No.22/2022, is hereby quashed and set aside.
- (iii) Appellants – Rajat @ Chintu Dindayal Sonekar and Purushottam Damodhar Mahakalkar, are released on

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bail in connection with Crime No.440/2021 registered with Police Station Bhandara, for the offence punishable under Section 302, 324, 341 read with Section 34 of the Indian Penal Code and Sections 3[2][v], 3[2][va] and 3[1][s] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on their executing P.R. bond in the sum of Rs.25,000/- each with one or two sureties in the like amount.

- (iv) Appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (v) Appellant shall not enter the territorial jurisdiction of Police Station Bhandara till recording of evidence of both the eye witnesses.

JUDGE

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