

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

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CRIMINAL APPEAL NO. 444 /2022

Child conflict with law
Through legal Guardian and mother
Shanta w/o Manoj Sende
Aged 38 years, occu: Housewife
R/o Netaji Nagar, Waghapur, Yavatmal. ..Appellant

versus

1) State of Maharashtra
Through PSO Awadhootwadi
Yavatmal.

2) Nikhat Pathan w/o Waseem Pathan
Aged about 28 years, occu: Housewife
R/o Netaji Nagar, Near Masjid
Darwah Road, Yavatmal.

3) Smt. Jijabai Tulshram Yerne
Aged about 56 years,
R/o Netaji Nagar, Yavatmal. ..Respondents

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Mr. Sheikh Sabahatullah, Advocate for the appellant
Mr. MJ. Khan, APP for the respondent 1
Mr Vivek Awachat, Advocate for respondents 2 and 3

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CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ
DATED : 28th September, 2022.

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

Admit. Heard finally.

2. By this Appeal, the child in conflict with law, has challenged the order dated 19.04.2022 passed by Sessions Court, Yavatmal in Special Case No.4/2022 whereby his bail application has been rejected. The appellant is accused of abetting the murder of Wasim Pathan and Umesh Yerne. The incident has occurred in the night on 12.10.2021. On the date of incident, the appellant was aged 17-years, 9 months and 1 days. The Juvenile Justice Board, Yavatmal after conducting an enquiry as contemplated under section 15(1) of Juvenile Justice (Care and Protection of Children) Act, 2015 held that the child in conflict with law should be tried as an adult, as provided under section 18(3) of Act of 2015. Accordingly, he is being tried as adult in Spl. Case No. 04/2022. He had preferred an application for releasing him on bail which came to be rejected vide order dated 19.04.2022 by learned Additional Session Judge, Yavatmal.

3. We have considered the rival submissions. It is the case of the prosecution that the first informant/respondent no.2 reside with husband and children. On 12th October,

2021, one Abdul Rehman (accused No.1) called her husband Wasim Pathan on mobile phone. The husband has then made a phone call to his friend Umesh Yerme and informed him of the phone received from Abdul Rehman. Umesh Yerme came to the house of the informant. Thereafter, her husband- Wasim and Umesh left the house on a vehicle. At about 6.00 p.m. Umesh with the present appellant came to the house of informant and handed over key of Bullet motorcycle. Upon enquiry by informant, Umesh said that her husband is sitting with his friends. At 8.30 pm. The informant made a phone call to her husband and said that she is not feeling well, upon which her husband informed her that one Niraj Waghmare has arranged a party and her husband along with Abdul Rehman, Umesh Yerme and other friends are present in the party. The informant then made an attempt to contact her husband between 9.00 and 10.00 pm but he did not pick up the call. Later on, she came to know that her husband and Umesh Yerme have been killed and their dead bodies were kept in Government Hospital.

4. The informant lodged the report mentioning therein that one month prior to the incident there had been a quarrel between her husband and Abdul Rehman and Chhotu Pathan, in front of Niraj Waghmare who gave threat to informant saying that she should advise her husband properly else he will be killed. It also appears from record that the meeting was arranged between the parties to settle the dispute 15 days prior to the incident.

5. During the course of investigation, it is revealed that on 12th October 2021 at about 10.00 pm, at the instance of Chhotu Pathan and Niraj Waghmare, the accused Abdul Rehman, Nilesh Uke and Yorme and the appellant, have killed Wasim Pathan and Umesh with sharp weapons.

6. The learned counsel for the appellant has submitted that the co-accused Niraj Waghmare and Chhote Pathan have already been released on bail vide orders dated 12.04.2022 and 19.07.2022 respectively. He further submits that there is absolutely no role assigned to the appellant in the first information report and accordingly prayed for his

release on bail, on the ground of parity so also on merit.

7. The learned APP supported the impugned order.

8. After hearing both sides and on perusal of the papers, we do not find any material against the appellant to keep him behind the bar pending the trial. As stated above, the co-accused have already been released on bail. The learned Advocate for the appellant has correctly pointed out that no role has been assigned to the appellant in the first information report. Nothing has been recovered at his instance. According to learned APP the Investigating officer has recovered rod and two knives, but the reply of the State is silent as to from whom the said recovery was made. What is against the appellant is that in the CCTV footage the appellant is found in the company of the deceased and other accused persons. The other incriminating material, according to prosecution, is that the appellant had accompanied Umesh Yerme to the house of informant to hand over the keys of the motorcycle prior to the incident. We do not find it to be incriminating material unless the act is connected with the

crime. Merely because the appellant was in company of the accused persons and the deceased, it cannot be said that he has committed the crime. The argument appears to us to be far fetched. The co-accused who were in the company have already been released. The appellant is young and is below 18 years. The prosecution has not placed before us any criminal antecedents against the appellant.

9. In the circumstances, it will be appropriate to set the appellant at liberty pending trial. The learned Sessions Judge without going into the details of the evidence collected against the appellant has jumped to the conclusion that the involvement of the appellant in the crime, is visible. However such inference is not supported by any evidence, much less the cogent evidence.

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

ORDER:

(i) Criminal Appeal No. 444/2022 is allowed.

(ii) The order dated 19.04.2022 rejecting the bail Application passed by learned Additional Sessions Judge Yavatmal 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.

11. Criminal Appeal stands disposed of.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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