

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

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CRIMINAL APPEAL NO. 470/2022

Sandhya Gajanan Joge,
Aged about 45 years, occu: Labour
R/o Talegaon (Talatule)
Tah. & Dist. Wardha.

..Appellant

versus

1) State of Maharashtra
Through PSO Sawangi Meghe
Dist. Wardha.

2) Shri Ravindra Surendra Khobragade
Aged about 46 years
R/o Baregaon-Meghe Gram Panchayat
Tah.& Dist. Wardha (Maharashtra).

..Respondents

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Mr.Sachin Sambre, Advocate for the appellant
Mr.S.S.Doifode, APP for the respondent 1/State
None present for the respondent 2 though served.

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CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ
DATED : 27th September, 2022.

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

Admit. Heard finally.

2. The appellant has preferred this Appeal under

Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act of 1989'), assailing the order dated 11th November 2021 passed by learned Additional Sessions Judge, Wardha in Criminal Bail Application No.425/2021, whereby the application filed by the appellant for releasing her on bail has been rejected. The appellant is facing trial for the offences punishable under sections 302, 120-B, 201 read with section 34 of the Indian Penal Code and Section 3(2)(v), 3(2)(va) of the Act of 1989.

2. The case of the prosecution, in substance, is that the accused no.1 had an extra-marital relations with accused no. 2. The accused no.3 (present appellant) is the friend of accused no.2. It is alleged that all the accused in collusion with each other and by hatching conspiracy, committed the murder of Vijaykumar Ganvir(deceased), in order to facilitate the relationship between accused nos.1 and 2. The role assigned to the appellant is that she has abetted commission of the crime.

3. The only evidence collected against the appellant is the discovery of articles u/s 27 of the Indian Evidence Act. Mr.Sachin Sambre, learned Advocate for the appellant has drawn our attention to the discovery *panchnama* dated 23rd March 2021. What has been discovered is the jewellery allegedly belonging to accused no. 2. These articles are in no way connected with the crime. Section 27 of the Evidence Act lays down that when any fact is discovered in consequence of information received from a person accused of any offence, in the custody of police officer, so much of such information as relates distinctly to the fact discovered may be proved. It is thus evident that the discovery u/s 27 could only be considered if it relates to the commission of offence. Admittedly, the jewellery of accused no.2 has no connection whatsoever with the alleged offence.

4. The other allegation against the appellant is that she has disposed of mobile of accused no.1. We note here that the Investigating Officer has not discovered the mobile allegedly used by accused no.1 at the instance of appellant.

Thus, mere allegation is made to that effect which even otherwise is insignificant at this stage because the offence u/s.201 of the IPC is a bailable offence.

5. Despite the above status, the learned Additional Sessions Judge, Wardha has rejected the application. Merely because some jewellery belonging to accused no.2 has been discovered at the instance of the appellant, which has no connection with the offence in question, the personal liberty guaranteed under Article 21 of the Constitution of India cannot be compromised.

6. So far as the offence punishable u/s.3(2)(v) of the Act of 1989 is concerned, it is not the case of the prosecution that the offence in question has been committed on the ground of deceased belonging to Scheduled Caste. The Hon'ble Supreme Court in the case of *Khuman Singh vs. State of Madhya Pradesh*¹ 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

1 (2020) 18 SCC 763

to establish that the offence has been committed only because the victim was belonging to Scheduled Castes or Scheduled Tribe, which is not even the case of the prosecution here. Therefore, the bail cannot be rejected on this count as well.

7. On the point of offence punishable u/s. 3(2)(va) of the Act of 1989, it provides that whoever commits any offence specified in the Schedule against a person or property, knowing that such person is a member of Scheduled Caste or a Scheduled Tribe, shall be punishable with such punishment as specified under the Indian Penal Code for such offence. In the present case, the accusation against the applicant is u/s 302 of the IPC, which is not a Schedule offence and, therefore, the offence is not made out. Even otherwise, once we have expressed doubt on accusation of commission of offence itself by the applicant u/s.302 of the IPC, the question of such offence being committed against a person who is a member of Scheduled Caste or Scheduled Tribe will be imaginary consideration.

8. For the reasons afore-stated, 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. 470/2022 is allowed.
- (ii) The order dated 11th November, 2021 rejecting the bail Application passed by learned Additional Sessions Judge, Wardha is quashed and set aside.
- (iii) The appellant/accused be released on bail on her 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 her 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 her so as to dissuade her 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.

Criminal Appeal stands disposed of.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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