

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

CRIMINAL APPEAL NO.469 OF 2022

Ganesh Laxman Dayare
Age: 35 years, Occupation: labour
R/o Sawala Taluka :- Darwha &
District: Yavatmal. **APPELLANT**

...V E R S U S...

1. The State of Maharashtra
Through Police Station Officers
Police Station Ladkhed,
Taluka :- Darwha &
District: Yavatmal.
2. Bhaurao Gangaram Madavi
Age: 50 years, Occupation: Farming
R/o Sawala, Taluka :- Darwha &
District: Yavatmal. **RESPONDENTS**

Mr. S. M. Ali, Advocate for Appellant.
Mr. S. S. Doifode, APP for Respondent 1/State.

CORAM: **ROHIT B. DEO AND ANIL L. PANSARE, JJ.**
DATE: **14th SEPTEMBER, 2022.**

ORAL JUDGMENT: **(PER ROHIT B. DEO, J.)**

The appellant is assailing the order dated 14.06.2022 rendered by the learned Additional Sessions Judge, Darwha whereby the learned Additional Sessions Judge, Darwha was pleased to reject the application preferred under Section 439 of

the Criminal Procedure Code.

2. The appellant is chargesheeted for offences punishable under section 302, 201 read with section 34 of the Indian Penal Code and section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

3. Broadly, the accusation is that the appellant assaulted Deorao with axe, causing his death, and then wrapped the body in the bed-sheets. The body was discovered near the Pathardi Devi Dam. Prior to the discovery of the body, the brother of the deceased lodged missing report on 30.01.2022.

4. We have scrutinized the charge-sheet. The material placed in service by the prosecution is that it was pursuant to memorandum recorded under section 27 of the Indian Evidence Act, that the axe which is the weapon of offence, and the cycle and torch of the deceased, were discovered from the canal.

5. The other material is, according to the prosecution, the fact that there was some dispute between the appellant and the deceased.

6. We note that *prima facie* there is no material to connect the axe allegedly recovered to the crime. This is a *prima facie* observation and it would ultimately be for the trial Judge to come to an appropriate conclusion.

7. While the learned counsel for the appellant has fairly stated that the appellant is facing six prosecutions under the Maharashtra Prohibition Act, we are not inclined to reject the bail on the ground that prosecutions under the Maharashtra Prohibition Act are pending, particularly considering the nature of the evidence on record.

8. The order impugned is set aside.

9. The appeal is allowed.

10. The appellant shall be released on bail subject to the following conditions:

- [i] The appellant be released on bail on furnishing P.R. bond of Rs.50,000/- (Rupees Fifty Thousand) with a solvent surety of like amount.

[ii] The appellant shall not tamper with the evidence and in particular shall not contact any witness.

[iii] The appellant shall not, directly or indirectly make any attempt to influence the witnesses.

[iv] The appellant shall not leave the country without the permission of the jurisdictional court.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)

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