

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

CRIMINAL APPEAL NO. 556 OF 2022

Deoram S/o Alaliram Pujari Age – 32 years, Occu. Labour R/o. Shivaritola, Post Pandharwani, Tah. Salekasa, Dist. Gondia	}	.. APPELLANT
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Versus

1. State of Maharashtra Through Polce, Station Officer Police Station – Salekasa, District – Gondia	}	.. RESPONDENTS
2. Geetabai wd/o Darvan Wadhiwe Age : 43, Occu. Housewife R/o Shivaritola, Post Pandharwani Tah. Salekha, District – Gondia.	}	

Mr. A. C. Jaltare, Advocate for appellant.
Ms. M. H. Deshmukh, APP for respondent No.1.
Mr. R. M. Pande, Advocate for respondent No.2.

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

DATED : 11/11/2022

ORAL JUDGMENT

Admit. Heard finally by the consent of the learned
counsel appearing for the parties.

(2) This is an appeal filed under Section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, raising a challenge to the order dated 04/05/2022, by which regular bail has been rejected by the Sessions Court, Gondia.

(3) At the instance of report lodged by wife of the deceased, Crime No.331 of 2021, dated 25/12/2021 has been registered for the offences punishable under Sections 302, 506 read with 34 of the Indian Penal Code, 1860 (IPC) along with Sections 3(2)(V) and 3(2)(5-A) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act (SC/ST Act). The crime was registered against two accused out of which the appellants are arrayed as accused No.1. The trial Court rejected regular bail that is why this appeal.

(4) It is the prosecution's case that on 24/12/2021 at around 5.00p.m. both the accused in furtherance of their common intention had assaulted deceased by means of an Axe. There were several Axe blows at neck, head and other parts of the body as the deceased, which proved to be fatal.

(5) The informant is wife of the deceased. While

informant was at her house, around 6.00p.m. she came to know about the assault, hence, she rushed to the place of incident. She was informed by eye witness that two unknown persons have assaulted her husband, therefore, she has lodged report in the late midnight. The Police carried investigation, in which the appellant along with one other are came to be arrested. After completion of investigation, charge-sheet has been filed.

(6) The learned counsel appearing for the appellant would submit that there is no evidence to ascertain the identity of assailant and therefore, it is a fit case for grant of bail. It is submitted that the crime was registered against unknown persons, as well as assailants were unknown to the solitary eye witness. It is argued that though the accused were arrested on 26/12/2021, Test Identification Parade (T.I.Parade) has been conducted belatedly after six months hence, not worthy of credit. The appellant (accused No.1) showed his willingness to stay out of the District while claiming bail.

(7) The State as well as learned counsel appearing for the informant put strong resistance to this appeal. It is contended that the crime was committed in a cruel manner, as the appellant and

co-accused have brutally assaulted deceased by means of Axe. Repeated blows were dealt on the vital part of the body, due to which death was an immediate effect. Particularly, it is submitted that the informant, her daughter and solitary witness have been threatened by the appellant and therefore, appellant's release on bail would be prejudicial to the interest of the prosecution.

(8) The learned counsel appearing for respondent No.2 has invited our attention to the order of this Court dated 22/09/2022 passed in Criminal Appeal No.482 of 2022, which indicates that this Court has shown its disinclination to grant bail to co-accused, namely, Suresh Indrasen Chachane. It is argued that as per prosecution's case, the main allegations are against the present appellant Deoram Pujari, whilst the allegations against co-accused Suresh Chachane were of instigation, however, his bail was rejected.

(9) Undoubtedly, the FIR is against unknown assailants. We have gone through the statement of sole eye witness recorded on the very next day of the lodging of FIR. She stated that at the relevant time she has seen two unknown persons while assaulting deceased by means of Axe. She has described that the person who was

wearing blue coloured jacket had dealt Axe blows to the deceased.

(10) Perusal of the police paper indicates that the appellant Deoram Pujari was arrested on 25/12/2021. On the very next day, he showed his willingness to disclose the place where he had concealed his cloths. At his instance, the police have seized a blue coloured coat and blood stained jeans pant. The said material *prima facie* indicates the involvement of appellant in the crime.

(11) The learned Prosecutor has invited our attention to the statement of one Ramu Halalsing Dongari, who has seen co-accused Suresh Chachane with one another before the occurrence. Moreover, our attention has been invited to the supplementary statement of the informant who has stated that the applicant was in rival terms with deceased on account of some earlier occurrences. She also stated that the appellant had earlier threatened deceased to kill.

(12) The police have conducted T.I.Parade on 15/07/2022, in which the solitary eye witness has identified the appellant. True inordinate delay in holding T.I.Parade loses its significance, however, that cannot be a thumb rule as it is to be

appreciated in context with the facts of the case. At this preliminary stage, we are not inclined to undertake exercise to comment on the effect of delay on T. I. Parade. The fact remains that the appellant was identified in T. I. Parade.

(13) It reveals from the impugned order, as well as it is informed by learned APP that in trial Court the witnesses and more particularly, the sole eye witness has filed application that she has been threatened. Admittedly, rival parties are residing in the same vicinity. It is evident from the police papers that the case is solely based on single eye witness, who is a village lady. Certainly, if her evidence is tampered, then it would give body blow to the prosecution's case.

(14) We feel that mere stringent condition in the situation would not serve the purpose. Moreover, the assault is deadly that axe blows have been repeatedly dealt at face, head causing the fatal consequence on the spot. Moreover, this Court (Justice Rohit B. Deo and Justice Anil L. Pansare) has declined to grant bail to the co-accused against whom the allegations are of assisting the present appellant.

(15) Having regard to the above facts, we are not inclined to exercise our discretion in granting bail. While parting with order, we feel it necessary to take note of the fact that though the appellant was arrested on 25/12/2021, the Investigation Officer has conducted prior T. I. Parade on 15/07/2022, meaning thereby after lapse of six months. Obviously, there cannot be any reason for such a prolonged delay, either we may say that this has been done intentionally by the Investigating Officer or he may not be aware about the basic requirements of law. This aspect shall be looked seriously, therefore, we direct to forward a copy of this order to concerned Superintendent of Police for his kind perusal and the steps, if any, he deems fit.

(16) In view of the above, the appeal stands dismissed.

[MRS. VRUSHALI V. JOSHI, J.]

[VINAY JOSHI J.]