

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

CRIMINAL APPEAL NO. 535/2022

Kishor S/o. Ashokrao Raut,
age 26 years, Occ. Agriculturist,
R/o. Parsoda, Tah. Samudrapur,
Dist. Wardha.

... **APPELLANT**

VERSUS

1. The State of Maharashtra
through Police Station Officer,
P. S. Dahegaon, Dist. Wardha,
2. Prashant Digambar Kannake,
R/o. Parsoda, Dahegaon, Gosavi,
Tah. Samudrapur, Dist.
Wardha (Complainant)

... **RESPONDENTS**

Mr. S. R. Dube, Advocate for appellant.
Mrs. M. Deshmukh, APP for respondent No.1/State.
Mr. K. L. Lambat, Advocate for respondent No.2.

CORAM : **VINAY JOSHI AND**
MRS. VRUSHALI V. JOSHI, JJ.
DATE OF JUDGMENT : **21/10/2022.**

ORAL JUDGMENT (PER : VINAY JOSHI, J.)

Heard.

2. Challenge in this appeal is to the order dated 14.07.2022, by which regular bail has been rejected by the Trial Court in Sessions Case No. 109/2021 relating to the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and Sections 3(1)(r)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The appellant has claimed bail on the ground of innocence, false implication, inadequacy of evidence as well as on the ground of parity. The State as well as the learned counsel appearing for the informant resisted bail by pointing towards seriousness of the offence. The resistance is on the ground that there is existence of circumstantial material to point out the guilt of accused.

4. At the instance of report lodged by the son of deceased, the crime was registered. It is prosecution case that on 18.07.2021, deceased Diganbar left house in the morning with tiffin, but he did not return. The family members thought that as usual deceased would have been halted at his friend's house and therefore, did not search.

On the following evening, they learnt that dead body of the Digambar was lying near railway track. The informant stated that there was a dispute of deceased with the family of accused and therefore, by suspecting role of of three accused, report has been lodged.

5. The case is totally based on the circumstantial evidence. The prosecution relied on the circumstance of seizure of two iron pipes at the instance of accused. Likewise, the prosecution took us through evidence of witness Gajanan and one other to contend that at the relevant time, they have seen all three accused proceeding by motorcycle with weapon. Besides these two circumstances, nothing is pointed out to show the complicity.

6. On the point of motive, some material is placed, however it is evident from the First Information Report ('FIR') as well as other statements that appellant's cousin brother Sandip was in rival terms, who had earlier threatened and quarreled with deceased. Thus, even if it is assumed there exist motive, however as per police papers, it is against Sandip. No doubt the appellant is his cousin brother, but unless his complicity is shown, motive cannot be assumed that against him. The Police have already seized blood stained rod from the place of occurrence. After seizure of iron rod and two pipes, they were sent for

query on which it is opined that injuries found on the person of deceased are possible by both the weapons. The postmortem report shows split wounds and two cut wounds. No sharp aged weapon has been used. There may be possibility of causing injuries by single iron rod or by both seized weapons. Though the prosecution has relied on the statement showing that all accused were seen with weapon, however it is not a last seen evidence. Merely it conveys that in proximity of time all three accused were proceeding together said direction. This Court has already released co-accused Sandip in Criminal Appeal No. 531/2022 against whom, there is strong motive. Already investigation is complete and charge-sheet has been filed.

7. Having regard to all above facts and considering the nature of material collected against accused, this is a fit case to grant bail.

8. In view of above, following order:-

(I) Criminal Appeal is allowed.

(II) Impugned order dated 14/07/2022 passed in Special Case No. 109/2021 is hereby quashed and set aside.

(III) Appellant – Kishor S/o Ashokrao Raut be released on bail in connection with Crime No. 94/2021 registered with Police Station Dahegon, Dist. Wardha for an offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and Sections 3(1)(r)(s), 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on he executing PR Bond in the sum of Rs. 50,000/- with one solvent surety in the like amount.

(IV) The appellant shall not enter in the territorial limits of village Dahegaon Gosavi, Tahsil Samudrapur, District Wardha, till conclusion of the trial.

(V) The Appellant shall not tamper with the prosecution evidence and also shall not influence the prosecution witnesses.

(VI) The Appellant shall attend the Trial Court on each and every date, unless specifically exempted by the Trial Court.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane