

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

CRIMINAL APPEAL NO. 493/2021

Rajesh s/o Sukhai Yadav,
Aged about 47 years, Occ. Labour,
r/o Bhim Nagar, Wardha,
Tq. Dsit. Wardha.

...APPELLANT

...VERSUS...

1. State of Maharashtra, throgh
PSO Wardha.
2. Anil s/o Kachruji Bhagat,
aged 49 years, Occ. Labour,
r/o Ward No. 4, Bhim Nagar,
Wardha, Tq. Dist. Wardha.

...RESPONDENTS

Mr. A. M. Jaltare, Advocate for appellant.
Mr. S. M. Ghodeswar, A.P.P. for respondent no.1.

CORAM : V. M. DESHPANDE &
AMIT B. BORKAR, JJ.
DATED : MARCH 7, 2022.

This appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is filed as application for regular bail filed by the appellant, came to be rejected by the learned Additional Sessions Judge, Wardha on 16.06.2021.

2. Heard Mr. Jaltare, learned counsel for appellant and Mr. Ghodeswar, learned A.P.P. for respondent-State. Nobody appears for respondent no.2, though served.

Admit. Taken up for final hearing.

3. It is the submission of the learned counsel for appellant that perusal of the First Information Report and statements of eye witnesses would show that none of the prosecution witnesses attributed role to present appellant that he has assaulted upon deceased Ashish by means of dagger. He submitted that at the most, appellant could be held responsible for assaulting on brother of the deceased and Anil, the first informant by stick on his hand.

4. The FIR is lodged by Anil, father of deceased, Ashish. It is dated 19.09.2019. The incident in question is dated 19.09.2019 at 09:15 p.m. According to the FIR, son of the appellant Saurabh, a juvenile in conflict with law, came to the house of Anil. He asked the deceased Ashish that he shall visit his house. Accordingly, the deceased Ashish went to the house of Saurabh. According to the FIR, first informant and his another son Pranal also accompanied

with Ashish. The FIR would further show that there was a dispute between the appellant and deceased in respect of the repayment of Rs.500/- and when the first informant tried to intervene in that, Saurabh, the juvenile in conflict with law, came and suddenly gave the dagger blow to the deceased Ashish. As per the FIR, the appellant also assaulted on the left hand of the first informant.

5. The eye witnesses Pranal Bhagat, Arachana Bhagat, Parag Sute and Panditrao Sute, whose statements are recorded after two days, though state that actual assault was made by Saurabh. It appears from their statements that prior to the said, appellant quipped certain words, which according to prosecution, was nothing but an exhortation to Saurabh to commit the assault. Such an important fact is not stated by the first informant in his complaint. Thus, it is a clear improvement in the statement of the other witnesses whose statements are recorded after two days and prima facie in the challan, there is no explanation as to why the statements are recorded belatedly.

6. The appellant has not actually assaulted upon the deceased and there is nothing in the FIR that the first informant

was assaulted by the appellant on his hand only because he belongs to the scheduled caste. Thus, in our view the appellant has made out a case for bail. Hence, we pass the following order.

ORDER

- (i) The appeal is allowed.
- (ii) Order dated 16.06.2021 passed by Additional Sessions Judge, Wardha in Misc. Criminal Case No.190/2021 is quashed and set aside.
- (iii) Appellant-Rajesh Sukhai Yadav, who is in jail in connection with Crime No.1586/2019, registered with Police Station, Wardha, for an offence punishable under Sections 302, 324 read with Section 34 of the IPC and Section 3 (2) (v) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is entitled to be released on bail.
- (iv) The appellant be released on bail on he executing P.R. bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- (v) The appellant is directed not to enter Wardha city till the trial decided, except on the dates of the trial.

(vi) At the time of execution of the bail, appellant shall furnish his residential address to the learned Judge before whom the bail bonds will be executed. The learned Judge before whom the bail bonds will be executed shall direct the appellant to visit the nearest police station of his residence once in every two months, till the trial is decided.

The appeal is disposed of.

JUDGE

JUDGE

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