

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

CRIMINAL APPEAL NO. 514 OF 2021

APPELLANT : Gopichand S/o Lokchand Katangkar,
Aged about 21 years, Occ. Agriculturist,
R/o Lohara, Tal. & Dist. Gondia.

V E R S U S

RESPONDENTS :

1. State of Maharashtra,
through Police Station Officer,
Police Station, Davaniwada,
Dist. Gondia.
2. Sau. Sevangan Wd/o Rajesh Kirsan,
Age - 30 years, Occ - Household,
R/o. Lohara, Tal. & Dist Gondia.

Shri R. M. Daga, Advocate for appellant.
Shri M. J. Khan, Additional Public Prosecutor for respondent No.1-State.
Dr. Renuka S. Sirpurkar, Advocate for respondent No.2.

CORAM:- MANISH PITALE AND
VALMIKI SA MENEZES, JJ.
DATED :- 26/07/2022.

ORAL JUDGMENT : (PER MANISH PITALE, J.) :

1. Heard. **Admit.** Heard learned counsel for the parties.
2. At the outset, Shri R. M. Daga, learned counsel appearing for the appellant sought permission to amend the prayer clause so as to state the details of order passed by District Judge-2 and Additional Sessions Judge, Gondia, whereby application for bail filed on behalf of the appellant was rejected.

3. Leave to amend the prayer clause a) is granted in the above terms. Amendment be carried out forthwith.

4. By this appeal, appellant - one of the accused persons, has challenged order dated 17/11/2021 passed by the aforesaid Court, whereby his bail application has been rejected. The appellant is one of the accused persons in Crime No.134/2021 registered at Police Station, Davaniwada, Dist. Gondia for offences punishable under Sections 302, 364, 324, 504, 506, 143, 144, 201 of the Indian Penal Code (IPC) and Sections 3(2)(5), 3(1)(r)(s), 3(2)(5)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Pursuant to investigation, on 01/10/2021, the charge-sheet came to be filed.

5. The appellant had approached the aforesaid Court seeking bail on the ground that the material on record pursuant to the investigation and along with the charge-sheet, did not ascribe specific role to the appellant and being a person with no criminal antecedents, he deserves to be enlarged on bail. But, the aforesaid Court rejected the application.

6. Shri R. M. Daga, learned counsel appearing for the appellant submitted that in the present case, the alleged incident

took place on 23/06/2021 and the FIR was registered after delay of 11 days on 04/07/2021. In the FIR, appellant was not named as one of the accused persons and only 12 persons were specifically named in respect of whom, specific role was attributed by the complainant i.e. respondent No.2 herein, who happens to be widow of the deceased victim. It is further submitted that on 06/07/2021, the appellant was arrested, while the statements of the witnesses filed along with the charge-sheet would show that it was for the first time that on 08/07/2021, respondent No.2 (informant - complainant) named the appellant and attributed some role to him in respect of the said incident. It is submitted that the said role ascribed to the appellant did not match with the alleged role ascribed to the appellant in the statements of other witnesses, which are recorded much later in July, 2021.

7. It is submitted that even if the statements of the witnesses filed along with the charge-sheet were to be taken at their face value, no role was attributed to the appellant and that he appeared to be roped in, after registration of FIR. According to the learned counsel appearing for the appellant, neither respondent No.2 (informant - complainant) nor her mother-in-law, who claims to be eye-witness to the incident, named the

appellant in their initial statements. On this basis, it was submitted that as per statements on record, the allegations made against other accused persons were clearly distinct from the role attributed to the appellant, thereby indicating that the appellant did not deserve further continuance in custody, having been arrested more than a year earlier.

8. On the other hand, Dr. Renuka Sirpurkar, learned counsel appearing for respondent No.2 (informant - complainant) submitted that the presence of the appellant was clearly established as per the statements of respondent No.2 and other eye-witnesses. Since Section 149 of the IPC was invoked in the present case, material indicating presence of the appellant at the spot of incident, was sufficient to show his active involvement in the crime and his liability as regards the said incident. It is submitted that delay in registration of FIR was not fatal, for the reason that immediately after the incident, which took place on 23/06/2021, respondent No.2 pursued the matter with the police. It is only because of the attitude of the police in not co-operating with the respondent No.2 and the victim that the offences were eventually registered on 04/07/2021.

9. It is submitted that the role of the Police was commented upon by the Division Bench of this Court in the Judgment and order dated 06/04/2022 in Criminal Appeal No.54/2022 filed by co-accused person challenging the order of the Court below rejecting his application for bail. The Division Bench of this Court found that the police officers of the said Police Station were responsible for the manner in which they handled the situation on 23/06/2021. The victim was brought to the Police Station in seriously injured condition. It is further seen that, while dismissing the appeal, Division Bench of this Court directed that the investigation would stand transferred to the State CID. On this basis, it is submitted that the present appeal deserves to be dismissed.

10. Shri M. J. Khan, learned Additional Public Prosecutor appeared on behalf of the Respondent-State and opposed the present appeal.

11. We have considered the contents of the FIR dated 04/07/2021, oral report leading to the registration of FIR, as also statements filed along with the charge-sheet.

12. Perusal of the aforesaid material shows that in the oral report submitted by respondent No.2, there is no reference to the appellant and only 12 accused persons were specifically named and their specific acts were described in detail. Even, while describing the manner in which the injured victim was transported from the place of incident to the Police Station, there is no reference in the oral report, either to the presence of the appellant or any role attributed to him.

13. The material on record shows that the body of victim was recovered on 06/07/2021 and the appellant was also arrested on the same day. It is, thereafter, on 08/07/2021, when the supplementary statement of the respondent No.2 was recorded that she named the appellant for the first time, alleging that he was also one of the persons, who had surrounded her husband when the assault was carried out. The mother-in-law of respondent No.2, also claimed to be an eye-witness to the incident, but she did not name the appellant, while describing the incident.

14. Apart from respondent No.2 and her mother-in-law, the appellant appears to have been named by Dipak Patle,

Kamlesh Kirsan and Kewal Lilhare. Perusal of statements of these witnesses indicates that while Dipak Patle claimed that after the assault, when the injured victim was being transported from the place of incident to the Police Station, the said witness and the appellant along with others accompanied the injured victim in the vehicle in question. The statement of witness Kamlesh Kirsan also indicates that the aforesaid role is attributed to the appellant. Both these witnesses, after describing the specific role attributed to the appellant, towards the end of their statements, have stated that the name of the appellant along with others as being involved in the assault on the victim. The witness Kewal Lilhare claimed to have seen the appellant along with others after the assault had taken place.

15. It is on the basis of the aforesaid material that the appellant has been in custody since 06/07/2021. It is also an admitted position that the bail applications of the other co-accused persons were rejected and appeal filed by one co-accused Dinesh Nagpure, referred to above, was dismissed by the Division Bench of this Court on 06/04/2022 (Criminal Appeal No.54/2022).

16. Perusal of the aforesaid material shows that from the beginning in the oral statement leading to the registration of FIR, specific act of assault was attributed to the said co-accused Dinesh Nagpure and therefore, the case of the appellant is distinguishable. In the initial statement made by respondent No.2, her mother-in-law and other alleged eye-witnesses, the appellant was not even named as being present at the spot of the incident. In subsequent supplementary statement, the name of the appellant has surfaced and the role attributed to him was that he was sitting in the car in which the injured victim was transported to the Police Station. Specific acts of assault have not been attributed to the appellant. Therefore, we are of the opinion that the case of the appellant for grant of bail is distinguishable from the other co-accused persons.

17. There is no material placed before us to contradict the statement made on behalf of the appellant that there are no criminal antecedents, insofar as he is concerned. The appellant is 21 years old young man. Learned counsel appearing for the appellant, on instructions, made a statement that the appellant would undertake not to contact respondent No.2 or any of the eye-witnesses in any manner during the trial. He would reside in a

place away from the place of residence of the respondent No.2 and her mother-in-law.

18. In view of the above, we are convinced that the present appeal deserves to be allowed in the following terms :-

i] The impugned order passed by the Court below dated 17/11/2021, rejecting the bail is quashed and set aside.

ii] It is directed that the appellant be released on bail in connection with FIR No.134/2021 registered with the Police Station, Davaniwada, Dist. Gondia for offences punishable under Sections 302, 364, 324, 504, 506, 143, 144, 201 of the Indian Penal Code (IPC) and Sections 3(2)(5), 3(1)(r)(s), 3(2)(5)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on executing P.R. Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

iii] The appellant shall not enter the jurisdiction of Police Station, Davaniwada, during the pendency of the trial.

iv] The appellant shall not in any manner contact respondent No.2 or other witnesses, during the pendency of the trial.

v] The appellant shall not undertake any steps which may have the effect of tampering with the evidence or influencing the witnesses.

vi] The appellant shall attend each and every date before the trial Court.

vii] Needless to say, failure to comply with the aforesaid conditions would make the appellant liable for cancellation of bail.

viii] It is made clear that the observations made in this order are only for the purpose of consideration of grant of bail to the appellant and the trial Court shall not in any manner be influenced by the same during the trial.

19. The appeal is allowed in the above terms.

[VALMIKI SA MENEZES, J.]

[MANISH PITALE, J.]

Choulwar