

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.24 OF 2023

Venkati @ Venkatrao s/o Govind Maske

Age: 42 years, Occu.: Agri.,

R/o. Lohagaon, Tq. & Dist. Hingoli

.. Appellant

Versus

1. The State of Maharashtra
(Through Hingoli Rural Police
Station, Dist. Hingoli.)

2. Arvind s/o Haridas Tapare
Age: 22 years, Occu.: Agri.,
R/o. Pangari (Balsakha),
Tq. and Dist. Hingoli

.. Respondents

...

WITH

CRIMINAL APPEAL NO.25 OF 2023

Aashabai w/o Baban @ Uttam Girhe

Age: 48 years, Occu.: Household,

R/o. Lohagaon, Tq. & Dist. Hingoli

.. Appellant

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station, Sengaon,
Tq. and Dist. Hingoli.
2. Arvind s/o Haridas Tapare,
Age: 22 years, Occu.: Agri.,
R/o. Pangari (B),
Tq. & Dist. Hingoli

.. Respondents

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Mr. N. S. Ghanekar, Advocate for appellant in Criminal Appeal No.24 of 2023.

Mr. A. R. Gaikwad h/f Mr. S. B. Solanke, Advocate for appellant in Criminal Appeal No.25 of 2023.

Mrs. V. S. Choudhary, APP for respondent No.1 - State.

Mr. P. M. Gaikwad, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : February 22, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Both the appeals have been filed by accused Nos.1 and 4 as per charge-sheet under Sections 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") to challenge the rejection of their applications under Section 439 of the Code of Criminal Procedure, which they had filed at Exhibit-6 and Exhibit-5 respectively before the learned Special Judge/Additional Sessions Judge-2, Hingoli. Both the applications came to be rejected on 23.12.2022.

2. These appellants have been arrayed as accused in Crime No.243 of 2022, which came to be registered on the basis of the FIR lodged by present respondent No.2 for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code and under 3(2)(v) of the Atrocities Act with Sengaoon Police Station, Dist. Hingoli

3. Heard learned Advocate Mr. N. S. Ghanekar for the appellant in Criminal Appeal No.24 of 2023, learned Advocate Mr. A. R. Gaikwad holding for learned Advocate Mr. S. B. Solanke for the appellant in

Criminal Appeal No.25 of 2023, learned APP Mrs. V. S. Choudhary for respondent No.1 - State in both the cases and learned Advocate Mr. P. M. Gaikwad for respondent No.2 in both the cases.

4. It has been vehemently submitted on behalf of the appellants that the learned Trial Judge erred in rejecting the bail applications. Informant is the son of deceased Haridas. In his FIR, he has stated that his father had illicit relations with one Aashabai Baban Girhe i.e. Appellant in Criminal Appeal No.25 of 2023. The informant, his mother i.e. wife of deceased had several times told Haridas that he should sever his relations with Aashabai, however, there was no change in the behaviour of Haridas. It is then stated that accused Dnyaneshwar is the son of Aashabai and he was objecting the relationship between Haridas and Aashabai. Dnyaneshwar used to quarrel with deceased, but thereafter two months prior to the FIR deceased had told the informant that Aashabai has developed illicit relations with appellant - Venkati and, therefore, there was dispute between him and Venkati. Accused Santosh Panbude is the brother of accused - Aashabai, who was also taking objection to her relationship, however, Haridas had fear in his mind that Venkati, Dnyaneshwar, Santosh and Aashabai would eliminate him. On 06.08.2022 the informant and his father Haridas had gone to release his Tata-S car from plice and while coming back, Haridas had

received telephone call from Aashabai. There was dispute between them, but after they had come to their village, Haridas alone went on motorcycle around 7.30 p.m. On the next day, his dead body was found on the bank of the river. These allegations all would show that they are depending on the suspicion. Now, the investigation is complete and charge-sheet is also filed. Perusal of the same would show that there is no direct evidence, but the case of the prosecution is depending on alleged theory of last seen together. All these aspects were not considered by the learned Special Judge. The custody of the appellants is not required further and, therefore, the appeals deserve to be allowed.

5. Per contra, the learned APP as well as learned Advocate representing respondent No.2 strongly opposed the appeals and supported the reasons given by the learned Trial Judge.

6. At the outset, we would like to say that though the offences under the Atrocities Act have been registered, there was no question of bar under Section 18 or 18-A of the Atrocities Act, as the bail application, that was filed by the appellants, was under Section 439 of the Code of Criminal Procedure i.e. after their arrest. The bar under Section 18 or 18-A is restricted to Section 438 of the Code of Criminal Procedure only. The learned Special Judge, therefore, ought

to have considered the case on the equal footing wherein the offence under Section 302 of Indian Penal Code is involved.

7. The contents of the FIR would show that the informant is making allegations about the illicit relations between his father and accused Aashabai, which was objected by him also. If there were such relations, then why Aashabai should think of eliminate Haridas. Perusal of the entire charge-sheet would *prima facie* show that there is no support to the statement that now Aashabai has developed relations with accused Venkati. Mere statements to that effect are not sufficient. No doubt, the postmortem report and inquest panchanama would show that death of Haridas is homicidal, but unless it is *prima facie* shown that there is connection between the accused and the deceased, in other words, the proximity between guilt of the accused and death, is shown, the bail ought not to have been refused. The case is based on circumstantial evidence, especially, the discovery allegedly made by accused Dnyaneshwar and Santosh. It ought to have been considered by the learned Trial Judge as to how their statements can bind the present appellants. No doubt, it is also stated that accused - Aashabai has also given memorandum statement and discovered her clothes and it is stated that there were blood stains on the said saree, yet as on today, the CA report is not collected. With this kind of evidence the appellants

need not be asked to remain in jail. All these aspects ought to have been considered by the learned Trial Judge, but there is absolutely no discussion and a very cryptic order has been passed, which is unsustainable in the eye of law. Therefore, it deserves to be set aside. The appeals are, therefore, required to be allowed. Hence, the following order :-

ORDER

- i) Criminal Appeal Nos.24 of 2023 and 25 of 2023 stand allowed.
- ii) The order passed below application Exhibit-06 in Special Case No.90 of 2022 dated 23.12.2022 and order passed below application Exhibit-05 in Special Case No.90 of 2022 dated 23.12.2022 by learned Special Judge, under the Atrocities Act/ Additional Sessions Judge-2, Hingoli stand set aside. The said application below Exhibit-06 in Special Case No.90 of 2022 stands allowed. The said application below Exhibit-05 in Special Case No.90 of 2022 stands allowed in respect of applicant - Aashabai w/o Baban @ Uttam Girhe only.
- iii) The Appellants in Criminal Appeal No.24 of 2023 i.e. **Venkati @ Venkatrao s/o Govind Maske** and the Appellant in Criminal Appeal No.25 of 2023 i.e. **Aashabai w/o Baban @ Uttam Girhe**, who have been arrested in connection with Crime No.243 of 2022 registered with Sengaoon Police Station, Dist. Hingoli for the offences punishable under Sections 302,

201 read with Section 34 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act, be released on P. R. Bond of Rs.30,000/- each with two solvent sureties of Rs.15,000/- each.

iv) The appellants in both the appeals shall not tamper with the evidence of the prosecution in any manner.

v) They shall not indulge in any criminal activity.

vi) Bail before the Trial Court.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm