

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

907 CRIMINAL APPEAL NO.116 OF 2023

**KISHAN @ KISAN SARJERAO MORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Appellant : Mr. P.R. Katneshwarkar h/f. Mahesh P. Kale

APP for Respondents/State : Mr. A.V. Deshmukh

Advocate for R/3 : Mr. Z.H. Farooqui

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**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.**

DATE : 10th March, 2023

PC. :-

1. Admit.

2. The present appeal has been filed under Section 14A of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'SC and ST Act') to challenge the order dated 03.02.2023 passed by the learned Special Judge / Additional Sessions Judge, Jalna under SC and ST Act in Criminal Misc. Application (Bail) No.117/2023 rejecting the application for pre-arrest bail filed by the present appellant.

3. Heard Mr. P.R. Katneshwarkar h/f. M.P. Kale learned advocate for the appellant, Mr. Deshmukh learned APP for the State and Mr. Farooqui learned advocate for the respondent no.3.

4. The present respondent is the original informant and deceased-Maruti is his son. The informant is the member of Scheduled Caste and he says that his son Maruti who is a married person was facing prosecution for the offence punishable under Section 307 in respect of an incident dated 29.11.2022 and since then he was not residing in the house. He then states that he is the owner of the agricultural land bearing no.102 and there is dispute in respect of the said land between the present appellant and his family members in respect of sale and money lending. The said dispute is pending before Sub-Registrar, Jalna. In the FIR which is lodged on 08.01.2023 vide C.R.No.10/2023 he states that on 07.01.2023 he came to know that a dead body is found in the well in gut no.625 belonging to one Manik Ashruba Gawali. He also came to know that the dead body has been taken to Rural Hospital, Mantha and his wife came to know that said dead body is of their son-Maruti. Therefore, he along with his wife and son went to hospital, identified the dead body on the basis of clothes, shoes, wallet, aadhar card and other documents. He says that the dead body was highly decomposed. He has then stated that in between 29.11.2022 to 07.01.2023

all the accused persons i.e. ten in numbers including the present appellant had abused his son in the name of caste and then they have committed his murder and thrown the dead body in the well.

5. From police papers it can be seen that the substantial part of the investigation is over.

6. Learned advocate Mr. Katneshwarkar h/f. Mr. Kale submits that the said case under Section 307 of the I.P.C. against Maruti was filed by one Ramchandra Khavane that FIR came to be lodged on 05.08.2022 with Partur Police Station, District Jalna for the offence punishable under Section 143, 147, 148, 149, 307, 323, 504, 506 of the I.P.C., deceased-Maruti was accused no.3. The present appellant was not involved in any manner in the incident dated 29.11.2022. The copy of the said FIR is made available for perusal. It is then stated that the said dispute in respect of land of the informant was also not against the present appellant but it was against Khavane family. The photocopy of the report is produced to show that the transaction was between the informant and his wife with Khavane family and no allegations were made against the appellant. It was held that it is an out and out sale and no question of money lending is involved and therefore the said complaint application was filed. It is further submitted that Maruti went missing on

29.11.2022 and his dead body has been found on 07.01.2023 till then there appears to be no progress and even the FIR does not say that a missing report was filed. Though, before the learned Special Judge when the bail application was filed and informant was called upon to put-forth his say he had given the written objection, yet it appears that the learned advocate engaged by the informant made a statement before the Special Judge that there is no *prima facie* case against the applicant and this has been reflected in the order, still the learned Additional Sessions Judge went on to reject the bail application. The impugned order is of no substance and therefore deserves to be set aside. Learned advocate for the appellant has placed on record the copy of the order passed in bail application of co-accused and submitted that though their bail applications were under Section 439 of the Cr.P.C., yet the observations / reasons stated therein are required to be considered here.

7. Per contra, the learned APP as well as learned advocate who has been appointed to represent the cause of the respondent no.2 strongly opposes the application. It has been submitted that though the appellant was having knowledge that the informant and his son were the members of Scheduled Caste, yet the offence has been committed against them, name of the appellant is reflected in the FIR and therefore thorough investigation is

required. The appellant is absconding since the registration of the FIR and he is not cooperating in the investigation. It is required to be considered as to where the deceased was taken, how the murder was committed and exactly where it was committed. Learned advocate for the respondent no.3 is also placing reliance on the written objection that was taken by the informant before the trial Judge.

8. At the outset, the prosecution case is already narrated in the foregoing paras and therefore it is not re-produced once again. The facts therefore reflect that the deceased went missing since 29.11.2022 but the FIR is silent on the point of lodging missing report. Even the police papers do not contain those documents which could have been taken in a missing report. In the FIR there is no explanation as to why the informant and the family members kept quiet for about 40 days. Another fact which can be seen from the inquest panchanama and the post mortem report is that the dead body was highly decomposed and therefore neither the panchas to the inquest panchanama nor the Medical Officer has given the cause of death, even in the provisional certificate the Medical Officer has stated that the provisional cause of death cannot be mentioned right now in this decomposed body and it appears that it is awaited till the viscera report.

9. Under such circumstances, as well as the fact that the statements of the witnesses would show that none of them is eye witness, it cannot be ascertained even *prima facie* that it is a murder. But now surprisingly in the supplementary statement of the informant and also the statements of his family members it has come that Maruti was forcibly taken from his house at around 6.00 pm on 29.11.2022. At the cost of repetition, it can be noted that in the FIR it is stated that since the quarrel that had taken place on 29.11.2022, Maruti has not returned to home. If we consider the FIR in C.R. No.588/2022 that was the FIR which was filed against the deceased then the timing during which the alleged incident took place was around 9.30 pm on 29.11.2022. Further when the family members including the wife of the deceased had the knowledge or were under the impression that the deceased was forcibly taken by Mayur More and Sadashiv More, why they had not lodged any FIR about the abduction. The supplementary statement also states about the inquiry by one Sadashiv More about the whereabouts of Maruti when in fact according to the informant and family members, Sadashiv was the person who along with Mayur had taken deceased forcibly. The said Sadashiv is now accused no.9 in the present FIR. It is then stated that after 30.11.2022 the informant and the family members were taking search of Maruti and they came to know that there was quarrel between two groups in

which Maruti was involved and then they were searching Maruti at Pathri, Watur, Pune, Aurangabad, Nasik, Mumbai, Lonar where his relatives are residing. Further the statement of the wife of the deceased gives another picture and even prior to the FIR it is stated that she was having mobile recording of the call from one Sandip More indicating the alleged murder by them.

10. With this kind of evidence collected right now and also the fact that whether the murder of Maruti is itself in question, at this stage the protection of liberty of the appellant is necessary. Unfortunately, the learned Special Judge has passed a very cryptic order literally within 10 to 15 lines and it appears that that he has not even gone through the police papers. His own observations from the order granting regular bail were before him but those have been brushed aside by saying that the criteria for grant of regular bail and pre-arrest bail are different. No doubt principally that is a true fact but when it comes to assessment of the fact that whether physical custody of the person is required or not then the observations would be same because they are based on the police papers those were considered even for grant of regular bail. Such cryptic order which is without application of mind cannot be allowed to sustain and therefore deserves to be set aside. The interim

protection granted earlier by this Court on 13.02.2023 deserves to be confirmed. Hence the following order:

ORDER:

- i) Appeal stands allowed.
- ii) The order passed by the learned Special Judge under the Atrocities Act / Additional Sessions Judge, Jalna in Criminal Misc. Application (Bail) No.117/2023 on 03.02.2023 stands set aside.
- iii) The interim order passed by this Court on 13.02.2023 stands confirmed, in other words, if the appellant is not yet released on bail on the terms granted by this Court, in the event of his arrest in connection with C.R. No.10/2023 dated 08.01.2023 registered with Partur Police Station, District Jalna for the offence punishable under Section 302, 147, 148, 149 of the I.P.C. and Section 4(i), 1(s), 3(2) (va) of the SC and ST Act, he be released on executing PR bond of Rs.30,000/- with two solvent sureties of Rs.30,000/- each.
- iv) He should remain present before the Investigating Officer every Monday between 10.00 am to 2.00 pm till the filing of the charge-sheet and shall cooperate with the investigation.
- v) He shall not try to tamper with the evidence of the prosecution by contacting the witnesses in any manner.
- vi) The fees of the appointed counsel for the respondent no.3 is quantified @ Rs.5000/- and it is to be paid through the High Court Legal Services Sub-Committee.