

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.132 OF 2023

1. Samadhan Bajirao Sonvane
Age: 39, Occu.: Agri.,

2. Ganesh Shankar Gawand
Age: 34, Occu.: Agri.,

Both R/o. Manjur, Tq. Kopargaon,
Dist. Ahmednagar

.. Appellants

Versus

1. The State of Maharashtra
Through Kopargaon Police Station,
Ahmednagar

2. Shobha Namdev Sonavane
Age: Major, Occu.: Agri.,
R/o. Manjur, Tq. Kopargaon,
Dist. Ahmednagar

.. Respondent

...

Mr. Shailesh S. Chapalgaonkar, Advocate for appellants.
Mr. R. V. Dasalkar, APP for respondent No.1 - State.
Mr. A. D. Sonkawade, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE , JJ.**

DATE : MARCH 01, 2023.

JUDGMENT :- [Per Smt. Vibha Kankanwadi, J.]

. Admit.

2. Present appeal has been filed under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Atrocities Act") to challenge the order of rejection of bail application by learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Kopergaon, Dist. Ahmednagar in Bail Application No.28 of 2023 on 31.01.2023. That application was filed under Section 439 of the Code of Criminal Procedure. The appellants were arrayed as accused persons in Crime No.322 of 2022 registered with Kopergaon Taluka Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 354, 294, 326, 324, 323, 504, 506, 509, 143, 144, 147, 148, 149, 427 of Indian Penal Code and under Sections 3(1)(r), 3(1)(s), 3(2)(5), 3(2)(v-a), 3(1)(w), 3(1)(g) of the Atrocities Act.

3. Heard learned Advocate Mr. Shailesh S. Chapalgaonkar for the appellants, learned APP Mr. R. V. Dasalkar for respondent No.1 - State and learned Advocate Mr. A. D. Sonkawade for respondent No.2.

4. The FIR has been lodged by present respondent No.2, who has stated that she and her family belong to Hindu Mahadeo Koli caste, which is a Scheduled Caste. She was residing with her husband and daughter. Her husband and daughter went around 9.00 a.m. on 19.08.2022 to drop the daughter to school. Around 10.00 a.m., the

brother-in-law of the informant told her that he has received phone call from one Sainath Bacchav that the husband of the informant i.e. Namdeo is being beaten by the accused persons including the present appellants. The place was said to be in front of grocery shop of one Tilekar. It was also informed that Namdeo was assaulted by sticks and iron rods. Informant and her brother-in-law Sunil along with Sunil's wife Usha went in front of shop of Tilekar. They saw the accused persons assaulting Namdeo with iron rod and sticks. They tried to intervene, however, they had also received injuries. They were abused in the name of caste. Accused had threatened them to kill. As a result of the assault, Namdeo expired and the FIR that was lodged by respondent No.2 came to be registered for the above-said various offences.

5. Learned Advocate for the appellants submitted that the appellants came to be arrested on 20.08.2022 and since then they are in jail. Now, the investigation is complete and charge-sheet is filed. They had, therefore, prayed for releasing them on regular bail, however, the said application has been rejected. Hence, this appeal.

6. Learned Advocate for the appellants further submitted that perusal of the FIR as well as charge-sheet would show that the role attributed to appellant No.1 was that he was holding iron rod and

appellant No.2 was holding stick. They along with the other accused persons, who were allegedly holding sticks, tommy, axe and sickle assaulted deceased Namdeo, however, it is not apparent from the FIR by the lady who poses herself as eye witness and injured, yet she has not stated which part of the body of her husband was targeted by the present appellants. It is then stated that all the accused persons together had caused injuries to both the knees, elbow and caused fracture. As regards injury to chest and back, it is not stated who had given those injuries and by which weapon. Thereafter, in the FIR, it has been stated that the present appellants as well as co-accused Ravindra had taken out their pants and by uttering obscene and abusive language in the name of caste, had insulted them. Even while going, appellant No.1 had threatened them to kill, but the statement of the other eye witnesses under Section 161 of the Code of Criminal Procedure does not refer to any obscene behaviour and also does not say which were the abuses those were given in the name of caste. Some of them are only referring that the abuses in the name of caste were given without quoting the abuses. Under such circumstance, even at this stage also, it can be said that those witnesses have not supported in entirety to the FIR. It can be seen that statements of certain witnesses have been taken on 20.08.2022, but the persons in front of whose shop the incident is alleged to have taken place, their

statements have been recorded after two months. Only the statement of the relative of the informant and deceased appears to have been recorded on 26.08.2022 i.e. six days after their initial statement. He also points out that co-accused Sahebrao Punjaji Sonvane and Shankar Narhari Gawand have been given bail by this Court in Criminal Appeal No.920 of 2022 on 05.01.2023 and, therefore, on the ground of parity also, for the observations therein, the present appeal deserves to be allowed.

7. Per contra, the learned APP as well as learned Advocate representing respondent No.2 have vehemently submitted that perusal of the FIR as well as the entire charge-sheet would show that specific role is attributed to the appellants. Namdeo was attacked by six persons having deadly weapons. The postmortem report would show that he had sustained eight surface wounds. There were corresponding internal injuries and the probable cause of death that has been given is "combined effect of septicaemia with cerebral damage due to blunt trauma to head with polytrauma." The statement of witnesses under Section 164 of the Code of Criminal Procedure would also reveal specific act of the appellants. It can be seen that since last many years the civil dispute is going on in respect of the way to the land and if the appellants are released on bail, they would tamper with the evidence of the prosecution and it would be

life threatening to the witnesses also.

8. It has been further submitted on behalf of learned Advocate for respondent No.2 that the co-accused were granted bail by this Court taking into consideration their age i.e. 70 and 62 years respectively. He relied on the decision in ***Mahadev Meena Vs.Praveen Rathore and another, (2021 SCC OnLine SC 804)*** in which the decision in ***Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana, [(2021) 6 SCC 230]*** was relied and it was held that the High Court while granting bail must focus on the role of the accused in deciding the aspect of parity and, therefore, in this case, the present appellants are also those persons, who had behaved with obscenity and abused the informant and others in the name of caste. This was also in response to the chequered history of civil litigation. Though the injunction has been granted by High Court against the accused persons, yet they had dared to assault Namdeo in public place and then Namdeo has succumbed to injuries. Even after those two co-accused were released on bail by imposing condition that they should not enter the village, yet pressurizing tactics are adopted by the accused and their relatives and non-cognizable offence has been registered against them. It shows the attempt for tampering with the evidence of the prosecution by the accused and on this count also, they do not deserve to be released on bail. He also relied on the

decision in ***State of Maharashtra Vs. Ritesh s/o Vasudeo Wanjari, [(2001) 4 SCC 224]***, wherein it has been held that :-

" For releasing the respondent on bail, the High Court has ventured to refer to the merits of the case and prematurely held that there was no material on record to show that the respondent was guilty of conspiracy, in execution of which, the deceased was murdered. Despite observing that the case was based on circumstantial evidence, the High Court did not afford the prosecution an opportunity to lead evidence for establishing the existence of conspiracy and wrongly held that it was difficult to infer the existence of a conspiracy, particularly when the respondent had gone to Baramati. The factum of the respondent going to Baramati was relied upon by the prosecution as one of the circumstances connecting the accused with the commission of the crime particularly when it was alleged that while at Baramati he used to have telephonic talks with the other accused persons about the alleged conspiracy. In the absence of "exact talks", the High Court found that the allegation of conspiracy was not established.

Once the final charge-sheet has been filed in the trial Court, the High Court, under the normal circumstances, should have permitted the respondent to get a verdict of his innocence or involvement from that court under Chapter XVIII of the Code of Criminal Procedure. No exceptional ground has been made out, in the instant case, to depart from such usual established procedure. The order impugned being contrary to law is liable to be set aside."

9. Before we turn to the merits, in ***Mahadev Meena (Supra)***, reference was made to the decision in ***Ram Govind Upadhyay Vs. Sudarshan Singh, [(2002) 3 SCC 598]***, wherein the two-judge Bench of the Hon'ble Supreme Court has listed the considerations that govern the grant of bail without attributing an exhaustive character to them. The Hon'ble Supreme Court observed thus :-

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being :

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as

to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

In ***Prasanta Kumar Sarkar Vs. Ashis Chatterjee, [(2010) 14 SCC 496]*** the factors to be borne in mind were given, which reads thus :-

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail. [internal citation omitted]"

These factors are borne in mind by this Court to consider whether the present appellants were entitled to get bail.

10. Perusal of the FIR would show that the appellants have their lands adjacent to the land of the deceased and it is said that there is long standing dispute in respect of way to the land. This Court has granted stay to the matter and, therefore, the dispute aggravated. The informant contends that her husband - Namdeo left along with

daughter for dropping her to school around 9.00 a.m. and around 10.00 a.m., her brother-in-law informed about the fact that six persons were assaulting Namdeo in front of Tilekar's shop. Informant, her brother-in-law and wife of brother-in-law went to the spot. The statement of these three persons corroborate each other, however, it is to be noted from all the statements of all the three witnesses that the alleged act imputing offence under the Atrocities Act appears to be against present appellants and co-accused Ravindra. It is stated that by doing obscene act, they had abused the informant in the name of caste. As regards the abuses in the name of caste is concerned, role of each accused will have to be considered. The informant, her brother-in-law, brother-in-law's wife - Usha and the other eye witnesses have stated that accused Sahebrao was holding axe and accused Shankar was holding stick and they had assaulted Namdeo as well as accused Shankar appears to have assaulted Usha with the stick. Unfortunately, Namdeo has expired, but the fact that is required to be considered is that the incident is stated to have taken place on 19.08.2022 and Namdeo expired on 24.08.2022. The postmortem reveals eight injuries of following nature :-

- 1) Bluish contused abrasion of size 6cm x 4cm was present over right side of upper arm.

- 2) Lacerated wound was present over right hand thumb with dressing.
- 3) Multiple sutured wounds was present over right side of leg with discharging fluid.
- 4) Bluish contused lacerated wounds of size 4cm x 3cm to 2cm x 1cm was present over left side of leg.
- 5) Bluish/Blackish contusion of size 6cm x 4 cm was present over left side of arm with fracture of underlying bone.
- 6) Bluish contusion of size 12 cm x 4 cm was present over left side of lumber region.
- 7) Multiple bluish contusion was present over back of trunk.
- 8) Contusion was present over left side of parietal region of scalp with effusion of blood."

The probable cause of death as aforesaid appears to be combined effect of septicaemia with cerebral damage due to blunt trauma to head with polytrauma. Whose weapon caused head injury to Namdeo cannot be ascertained, as there is no such specific statement either in the FIR or in statements of the witnesses under Section 161 of the Code of Criminal Procedure. Taking into consideration the septicaemia, which would have developed later to

the bruises, it will have to be considered by the trial Court, as to whether there was intention and knowledge to kill Namdeo.

11. The investigation is over and charge-sheet is filed. The role attributed to the present appellants is holding of iron rod and stick. The discovery of iron rod as well as stick appears to be from co-accused Yogesh Gawand on 21.08.2022. Keeping the question open as to whether the said discovery would be admissible against the present accused or not, the only fact is then required to be considered that accused Yogesh appears to be the brother of appellant No.2 and the discovery panchanama states that the scythe was also discovered by Yogesh and it is then stated that it was used by appellant No.2 Ganesh, but the FIR speaks something else. The present appellant is said to have discovered his motorcycle and his clothes. The CA reports are yet awaited. At the cost of repetition, it will have to be stated that even from the statements of certain witnesses under Section 164 of the Code of Criminal Procedure it cannot be gathered whose weapon has caused which injury to Namdeo.

12. As regards, the obscene act and abuses given in the name of caste are concerned no doubt it is attributed to the present appellants, but taking that offence in segregation will not justify the further custody of the accused. Another fact will have to be

considered here is that the litigation is going on since last many years and at any earlier point of time, it has not been pointed out that the situation was so worst i.e. resulting in such attacks. Therefore, taking into consideration all these aspects, the appellant ought to have been released on bail by the learned Special Judge. No doubt, the offence charged against the appellants are serious in nature, but for the aforesaid reasons, they need not be asked to remain in jail as it will be long way to stand their trial. Taking into consideration the long standing rivalry, the same restrictions are required to be imposed on the present appellants also, which were imposed on the co-accused. In addition to the same one more clause is required to be added to caution the concerned persons that any act of tampering/ presurizing the witnesses would give liberty to the State and/or to the victim to approach this Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

13. For the aforesaid reasons, the following order is passed :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the Atrocities Act/Additional Sessions Judge,

Kopargaon in Bail Application No.28 of 2023 dated 31.01.2023 stands set aside. The said application stands allowed.

iii) Appellant No.1 - Samadhan Bajirao Sonvane and Appellant No.2 - Ganesh Shankar Gawand, who have been arrested in connection with Crime No.322 of 2022 registered with Kopargaon Police Station, Dist. Ahmednagar for the offences punishable under Sections 302, 354, 294, 326, 324, 323, 504, 506, 509, 143, 144, 147, 148, 149, 427 of Indian Penal Code and under Section 3(1)(r), 3(1)(s), 3(2)(5), 3(2) (v-a), 3(1)(w), 3(1)(g) of the Atrocities Act, be released on P.R. Bond of Rs.50,000/- each with two solvent sureties of Rs.25,000/- each.

iv) The appellants shall not enter the jurisdiction of village Manjur, Tq. Kopargaon, Dist. Ahmednagar till the conclusion of trial. They should reside elsewhere, and before submission of bail papers, the appellants should give complete address of their proposed residence with their mobile numbers to the Trial Court as well as to the Investigating Officer.

v) They shall not tamper with the evidence of the prosecution in any manner.

vi) If they commit any act of tampering/pressurizing witnesses, then the State/victim is at liberty to approach this Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

vii) They shall not indulge in any criminal activity.

viii) Bail before the Trial Court.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm