

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.137 OF 2023

Vijay s/o Sanjay Jadhav
Age: 22 years, Occu.: Labour,
R/o. Dhanegaon,
Tq. and Dist. Nanded

.. Appellant

Versus

1. The State of Maharashtra
Through Nanded Rural Police Station,
Tq. and Dist. Nanded.

2. Ashish Bhagwat Gaikwad
Age: 21 years, Occu.: Labour,
Tq. Tirupati Nagar, Dhanegaon,
Tq. and Dist. Nanded.

.. Respondents

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Mr. A. P. Deshmukh h/f Mr. Sachin S. Deshmukh, Advocate for
appellant.

Mr. A. V. Deshmukh, APP for respondent No.1 - State.

Mr. S. G. Magre, Advocate for respondent No.2.

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

DATE : March 16, 2023.

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

. Present appeal has been filed under Section 14-A(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,
1989 (hereinafter referred to as the "Atrocities Act") challenging the

order below Exhibit-5 in Special Atrocity Case No.80 of 2022 by learned Special Judge, under the Atrocities Act/Additional Sessions Judge-1, Nanded dated 24.11.2022, thereby rejecting the bail application filed by the present appellant under Section 439 of the Code of Criminal Procedure.

2. Present appellant has been arrested in connection with Crime No.302 of 2022 dated 22.05.2022 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Section 302 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act. The appellant came to be arrested on 31.05.2022 and since then he is in custody. The investigation is over and charge-sheet has been filed.

3. Heard learned Advocate Mr. A. P. Deshmukh holding for learned Advocate Mr. Sachin S. Deshmukh for the appellant, learned APP Mr. A. V. Deshmukh for respondent No.1 - State and learned Advocate Mr. S. G. Magre for respondent No.2.

4. It has been vehemently submitted on behalf of the appellant that perusal of the charge-sheet would show that the FIR was lodged by one Aashish Bhagwat Gaikwad, who is the son of deceased Bhagwat Shivram Gaikwad, against unknown person. It is stated that in the intervening night of 21.05.2022 and 22.05.2022, his father was sleeping near the door of the house and around 12.30 a.m

informant's sister started crying. They found that the deceased had suffered severe injury to his head and there was huge stone by the side of his head. Though the deceased was shifted to hospital, he was declared dead. Accordingly, the statements of witnesses have been recorded under Section 161 of the Code of Criminal Procedure. It appears that during the course of investigation, the investigating officer found that one Hemant Jagdish Bichkewar is resident of the same area where the deceased was residing and CCTV are installed outside his house. Therefore, on 31.05.2022, the investigating officer made inquiry with him regarding the CCTV footage and it is then stated that a suspicious person was found going towards the house of deceased around 12.34 a.m. The CCTV installed was collected and then the supplementary statement of the informant has been recorded wherein after showing the said CCTV footage, the accused is stated to have got identified. Thereafter, supplementary statement of the witnesses have been recorded and each one of them are shown with the CCTV footage. Except the said evidence of CCTV footage, there is nothing against the accused and, therefore, with this kind of evidence, the appellant need not be kept in jail. There was no motive to commit any murder.

5. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 - original informant strongly opposed

the appeal and they supported the reasons given by the learned Special Judge while rejecting the bail application. It is submitted that about 8 to 15 days prior to the incident deceased had obstructed the appellant from coming towards his house or lane at night time/odd hours, as the accused was in the habit of consuming intoxicants in open spaces. At that time, the accused had told deceased that he would see that the deceased is eliminated. A brutal murder has been committed. Accused is from the same village and, therefore, had the knowledge about the caste of the deceased. The activities of the accused are captured in CCTV. He was the only person, who was found to be going towards the house of informant at the said hours. When there are strong pieces of evidence, discretionary power should not be used.

6. At the outset, it is to be noted that the circumstances and the evidence that has been collected on record *prima facie* do not disclose that the murder was committed only because deceased was member of Scheduled Caste. When the offence was registered, initially, it was only under Section 302 of Indian Penal Code, later on when it is alleged to be transpired that the accused appellant is the person, who had committed the offence, who is not the member of Scheduled Caste, those Sections have been invoked. The Sections under the Atrocities Act have been added on 24.07.2022 and till that time,

substantial evidence have been carried out by the police officer of the rank of Assistant Police Inspector. After the Sections of the Atrocities Act were invoked, the investigation has been handed over to Deputy Superintendent of Police, Itwara Sub Division, Nanded and, thereafter, it appears that he has taken the supplementary statements of the witnesses. On this count, it has to be concluded that *prima facie* the offence under the Atrocities Act is not made out. This fact can also be viewed from another angle. After the CCTV footage was seen by the informant and he identified the appellant, he is then revealing that about 15 days prior to the incident his father has obstructed the accused, as the deceased had found accused consuming intoxicant in open space around the house of the deceased. If that was the reason or motive for committing murder, it cannot be said that merely because the deceased was belonging to a particular caste, the accused had committed such offence. However, we leave this point further to be elaborated on the basis of evidence that would be led at the time of final hearing before the Special Court. The offence under the Atrocities Act would not be the hurdle for considering bail application under Section 439 of the Code of Criminal Procedure. The bar under Section 18 or 18-A of the Atrocities Act would be applicable only to the anticipatory bail under Section 438 of the Code of Criminal Procedure.

7. Perusal of the charge-sheet would show that initially the offence was against unknown persons and it had taken place in the intervening night of 21.05.2022 to 22.05.2022. For the first time, the CCTV footage from the CCTV's installed at the house of Hemant Bichkewar was transpired. Interesting point to be noted is that the said Hemant Bichkewar is Police Naik attached to local crime branch since about two years prior to the incident. He is also resident of same Society/Nagar i.e. Tirupati Nagar, Tirupati Society, Dhanegaon. It is hard to believe that in spite of knowledge of murder committed in his adjacent area, he would not checked the CCTV footage of the CCTV installed at his house. If his statement under Section 161 of the Code of Criminal Procedure is considered, he states that in view of the investigation, the police were making inquiry with the persons from his gully and they were checking the CCTV footages from the gully. It presupposes that there are other CCTV's installed in adjoining persons house/neighbourhood. The charge-sheet shows the CCTV footage collected from the CCTV of Hemant Bichkewar only. It appears from the transcription in the CCTV footage seizure panchanama that the CCTV footage has been taken in pen-drive and the hash value has been taken out. How far the said electronic evidence can be proved is a different fact, but what was seen was that the accused was found to have gone towards the house of

deceased around 12.45 a.m. Whether this only piece of evidence can be considered would be decided at the time of final hearing, however, for the purpose of bail application only note can be taken of the fact that such piece of evidence is against the accused. Further, it appears that after the charge-sheet was filed, there is one more panchanama drawn on 10.03.2023 stating the distance between the house of Hemant Bichkewar to the house of deceased and a map drawn in respect of the same. Even if that document is considered, yet as aforesaid it is the only piece of evidence. With this piece of evidence, the applicant need not be asked to languish in jail, as it would take much time to stand his trial. At the same time, we are required consider the safety of the witnesses and, therefore, by striking a balance, the accused can be granted bail. Hence, the following order :-

ORDER

- i) The appeal stands allowed.
- ii) The order passed by learned Special Judge under the Atrocities Act/Additional Sessions Judge-1, Nanded below Exhibit-5 in Special Atrocity Case No.80 of 2022 dated 24.11.2022 stands set aside. The said application stands allowed.
- iii) Appellant - Vijay s/o Sanjay Jadhav, who has been arrested in connection with Crime No.302 of

2022 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Section 302 of Indian Penal Code and under Section 3(2)(v) of the Atrocities Act, be released on P.R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

iv) The appellant shall not visit or reside in village Dhanegaon, Taluka and District Nanded till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his mobile number to the Trial Court as well as to the Investigating Officer.

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

vi) He shall not indulge in any criminal activity.

vii) Bail before the Trial Court.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm