

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

CRIMINAL APPEAL NO.247 OF 2022

Deepak Vijay Dolas,
Age-21 years, Occu:Labour,
R/o-Rahuri Khurd, Tal-Rahuri,
Dist-Ahmednagar.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
Police Station Officer,
Loni Police Station, Loni,
Tal-Rahata, Dist-Ahmednagar,
- 2) Gorakh Ashok Barde,
Age-31 years, Occu:Labour,
R/o-Rahuri Khurd, Bhillahati,
Tal-Rahuri, Dist-Ahmednagar.

...RESPONDENTS

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Mr. Shaikh Mazhar A. Jahagirdar Advocate for Applicant.
Mrs. P.V. Diggikar, A.P.P. for Respondent No.1 – State.
Mr. Sanket N. Suaryawanshi Advocate appointed for
Respondent No.2.

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

DATE OF RESERVING JUDGMENT : 18th JANUARY 2023

DATE OF PRONOUNCING JUDGMENT : 3rd FEBRUARY 2023

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :**1. Admit.**

2. 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 of rejection of bail of the appellant – original accused No.2 under Section 439 of the Code of Criminal Procedure by the learned Special Judge under the Atrocities Act, Kopergaon in Special Case No.28 of 2021 on 19th November 2021.

3. On the basis of the First Information Report (for short "FIR") lodged by present respondent No.2 vide Crime No.100 of 2021 with Loni Police Station, District-Ahmednagar, offence under Sections 302, 120-B read with Section 34 of the Indian Penal Code and Section 3(2)(5) of the Atrocities Act has been registered against the present appellant and one Bhiva @ Vitthal Kailas Kawale, alleging that the accused persons have committed murder of his brother-in-law Arjun Pawar at about 7.30 p.m. on 16th March 2021.

4. Heard learned Advocate Mr. Jahagirdar Advocate appearing for applicant, learned APP Mrs. Diggikar appearing for respondent No.1 – State and learned Advocate Mr. Suaryawanshi appointed for respondent No.2.

5. It has been vehemently submitted on behalf of the appellant that perusal of the entire charge-sheet would show that the case of the prosecution is based on circumstantial evidence. The said circumstantial evidence is in the nature of 'last seen together', recovery and discovery under Section 27 of the Indian Evidence Act. The statements of certain witnesses under Section 161 of the Code of Criminal Procedure would disclose that there was love affair between deceased and a girl from the same village. However, the FIR also discloses that accused No.1 was also loving the same girl and used to visit her house. There was dispute between the accused persons and deceased about eight days prior to the date of FIR i.e. 17th March 2021 and the said dispute was settled due to the intervention of one Ajay Lahanu Mali and Vikas Barde. The statements of witnesses also show, as well as supported by the contents of the FIR, that deceased had given phone call around 4.30 p.m. on 16th March 2021 to Ajay Lahanu Mali stating that the accused persons were assaulting him. When Ajay informed the said fact

to the informant, informant gave phone call to deceased. Deceased at that time disclosed that he would be proceeding along with accused persons to drink the liquor. Still, the informant went to the house of the accused persons, however, they were not present. From the neighbour of present appellant the mobile number of the appellant was taken by the informant and a phone call was given. Thereupon the present appellant disclosed that he is at Gavanwadi. Later on the informant came to know that a dead body of a boy between the age group of 25 to 30 years has been found at Loni. Therefore, the informant and his relatives went to Loni Police Station and thereafter they went to Pravara Hospital, Loni where they identified the dead body of deceased. Thus, it is clear from the contents of the FIR that at one place it is stated that it was informed by the deceased to witness that he is being assaulted by the accused and at another breath after some time it is told by the deceased that he is proceeding to drink liquor. Both such things cannot go together. Further, now the investigation is over and charge-sheet is filed, which would disclose that articles have been seized and those have been sent for chemical analysis but report of the chemical analysis is not yet received. Whatever discovery has been made, is by accused No.1 and not by this appellant. The prosecution

also intends to rely on the statement of the shop owner who sold liquor bottle to the accused persons and also the CCTV footage, which showed dispute between the accused persons and deceased, however, the timings do not match. With this evidence, it is not necessary to keep the appellant behind bars as it will take much time for his trial to stand. The learned trial Court has considered only the apparent evidence but has not considered that further physical custody of the appellant is not required for the purpose of investigation and therefore, the said order deserves to be set aside.

6. Per contra, the learned APP appearing for the State and learned appointed Advocate for respondent No.2 strongly opposed the appeal. They supported the reasons given by the learned trial Judge. Though both of them have admitted that case is based on circumstantial evidence, yet they both submitted that perusal of the entire charge-sheet would show that a link has been established. The discovery is not only of the weapon used in the commission of crime but also the motorcycle of the deceased which was concealed in the bushes. The strong evidence is in the nature of batch number, bar code number on the whiskey bottle, which was purchased from Sunil Wines, Rahuri. The bar code number matches and the CCTV footage

also reveals that there was dispute between deceased and the accused persons. The dispute was in respect of the alleged love affair with the same girl by deceased and accused No.1 and the present appellant was helping accused No.1 in achieving his object. Statement of one Rohit Mali would show that he was near Ayub Mutton Shop around 4.00 to 4.30 p.m. on 16th March 2021. The accused persons came there on their motorcycle and present appellant was driving the motorcycle. They told deceased that they want to enjoy party and therefore he should accompany them. Thereafter deceased went on the motorcycle. The postmortem report would show that there were seven surface wounds. The internal examination showed fractured skull and therefore, the probable cause of death is head injury, which is homicidal death. The statements of other witnesses also supports the prosecution story and therefore, this cannot be a fit case where discretion of releasing an accused on bail should be exercised in favour of the appellant.

7. At the outset, here admittedly the case is based on circumstantial evidence. The prosecution appears to have come with the story that deceased was in love with the girl from the same village and the girl in her statement under Section 161 of the Code of Criminal Procedure appears to have accepted it. She

also states that there was dispute between accused No.1 and deceased on the count of the love affair between her and deceased. However, she does not claim anything more than that. Thereby, the prosecution intends to bring the motive on record, which is subjected to be proved at the time of trial. Now, the evidence that is on record is in the nature of postmortem report, which shows head injury as the cause of death and it is tried to be linked to the discovery by accused No.1. The discovery is in respect of Hero Honda Splendor bearing No. MH-17-BK-2349. It is not on record as to who is the owner of the said vehicle. But, then it is stated in the memorandum and the panchnama that present appellant as well as accused No.1, who had made the said disclosure, had concealed the vehicle behind the bushes. As per the statement of person last seen together, the said vehicle was being driven by the appellant, yet the discovery is by accused No.1. How it will bind the present appellant would be considered by the trial Court on the basis of evidence.

8. As regards the 'last seen together' is concerned, witness has stated that he had seen both the accused coming near Ayub Mutton shop around 4.00 to 4.30 p.m. At this stage, if we consider the transcription of CCTV footage, then it states that the accused persons and deceased were seen around 3.22 to

3.33 p.m. i.e. 15.22 to 15.33 Hours. It is mentioned in the transcription panchnama itself that the clock in the CCTV is behind by 1 hour 30 minutes. Now, how this will have to be interpreted, would be a question before the trial Court because some of the adjoining shop owners to the liquor shop have stated that the dispute had taken place at about 5.35 p.m. The boy who had last seen deceased along with accused, has been examined under Section 164 of the Code of Criminal Procedure, however, the said statement does not contain the date as well as time. Another aspect is, when there was earlier dispute and even quarrel had taken place between the accused and deceased eight days prior to the incident but the said dispute was settled, as well as the fact that deceased was knowing the reason for the dispute, then whether he would have gone along with the accused persons for drinking liquor, would also be a question.

9. Taking into consideration all these aspects, we find that case was made out for grant of bail, however, the learned trial Judge has not considered all the aspects in proper perspective. Further, physical custody of the applicant was not required and there was also no bar for grant of regular bail under any of the Acts. The appellant has permanent place of abode and therefore,

the Appeal deserves to be allowed, however, strict conditions are required to be imposed. Hence the following order:

ORDER

(I) The Appeal stands allowed.

(II) The order passed by the learned Special Judge under the Atrocities Act, Kopargaon in Special Case No.28 of 2021 dated 19th November 2021 stands set aside. The application stands allowed.

(III) Appellant – Deepak Vijay Dolas, who has been arrested in connection with Crime No.100 of 2021 registered with Loni Police Station, District-Ahmednagar, for the offence punishable under Sections 302, 120-B read with Section 34 of the Indian Penal Code and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, be released on bail on P.R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.

(IV) The appellant shall not enter the jurisdiction of Rahuri Khurd, Taluka-Rahuri, District-Ahmednagar till the conclusion of the 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) Appellant shall not tamper with the evidence of the prosecution in any manner.

(VI) Appellant shall not indulge in any criminal activity.

(VII) Bail before the Trial Court.

(VIII) Fees of the learned Advocate, who is appointed to represent the cause of respondent No.2, is quantified at Rs.5000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/FEB23