

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 733 OF 2023

Sanvidhan s/o Punjaram Jadhav

Appellant

Versus

State of Maharashtra & another

Respondents

Mr. N. S. Ghanekar, Advocate for the appellant.

Mrs. G. L. Deshpande, APP for the State.

Mr. A. L. Kanade, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.

RESERVED ON : 23rd OCTOBER, 2023.

PRONOUNCED ON : 26th OCTOBER, 2023.

ORDER

1. Appellant has preferred this appeal being aggrieved by the order of rejection of regular bail by learned Special Judge, Aurangabad in connection with Crime No. 195/2022 registered with CIDCO Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 143, 147, 148, 149, 120(B), 201, 114 of Indian Penal Code and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. First informant is the mother of deceased Manoj. She reported the incident dated 20th April, 2022. According to her, while she was at home with Manoj, one Satish Khare and five to six persons came along with him and took Manoj under the pretext of tent work (*Mandap*). Later on she received a video indicating Manoj being assaulted after his hands and legs were tied. She came to Aurangabad and went to the house of Satish Khare at Siddharth Nagar, Aurangabad. No one was found there. They went to Mehawale Function Hall at N-12, Hudco, Aurangabad. The said place was locked. Informant went to police station wherein she got knowledge about Manoj being admitted in Ghati Hospital in unconscious state for the purpose of treatment where he was declared dead. It is alleged that Satish Khare and others assaulted Manoj to death.

3. Learned counsel for appellant submits that though name of the present appellant is referred in the First Information Report however, there is no allegation against him that he caused assault on the deceased. It is his submission that even otherwise, charge-sheet does not show that for the purpose of killing he was brought by even co-accused. It is submitted that the allegation against the present

appellant is that he gave bath to the deceased after he was assaulted and his clothes were changed. According to him, offence against the present appellant cannot travel beyond Section 201 of the Indian Penal Code. It is submitted that since the involvement of the appellant is not found in the offence punishable under Section 302 of Indian Penal Code, he is entitled for bail as he is behind the bar for more than one year.

4. Learned APP and learned counsel for the informant opposed the appeal on the ground that the offence committed is serious in nature. It is submitted that the co-accused along with present appellant took the deceased from his house on the pretext of work and thereafter he was beaten to death. It is submitted that the manner in which the deceased was assaulted clearly shows brutality of crime. Learned counsel for informant submits that since Section 149 of Indian Penal Code is made applicable, present appellant is also responsible for the act of the co-accused. He drew attention of the court to the statement of eye-witness Shubham who has clearly spelt out the presence of appellant on the spot and the acts done by him. It is his submission that co-accused against whom similar role is alleged has been denied regular bail by this Court in Criminal

Appeal No. 398/2023. Thus, according to him, present appellant is not entitled for bail.

5. There is no doubt about the fact that deceased was beaten brutally to death by co-accused. However, the entire charge-sheet does not indicate involvement of the present appellant in the said assault. The sole witness to the incident also does not state any overtact being committed by the present appellant in the assault caused to the deceased. He specifically states that after the deceased was assaulted, present appellant and one co-accused gave him bath and changed his clothes. From his statement, it is clear that the role of the present appellant cannot travel beyond Section 201 of Indian Penal Code.

6. As far as contention of learned counsel for the informant and learned APP about applicability of Section 149 of Indian Penal Code to the present case and therefore, present appellant being responsible for the acts of the co-accused is concerned, perusal of First Information Report as well as statement of eye-witness indicates that the co-accused had brought deceased to the spot in order to question him about theft being committed by him. Record indicates

that initially the deceased was questioned about it and when he denied the same he was beaten. Thus, prima facie it cannot be said that bringing of deceased to the spot was for the purpose of killing him. This Court, therefore, prima facie does not find substance in the contention of learned counsel for the informant that in view of application of Section 149 of Indian Penal Code, present appellant is responsible for the overt act committed by the co-accused. As regards refusal of bail to the co-accused, perusal of record indicates that from the said co-accused recovery of incriminating articles under Section 27 of Evidence Act is done. However, in the present case, charge-sheet does not indicate any recovery at the instance of present appellant. Thus, case of the present appellant and co-accused stand on different footing.

7. Without prejudice to the submissions, informant has raised apprehension about informant and witnesses being pressurised if the appellant is enlarged on bail. There are no criminal antecedents against the present appellant. However, having regard to the seriousness of the crime, imposition of appropriate condition of preventing entry of the appellant in the jurisdiction of concerned police station till recording of evidence of informant and

eye witness will be sufficient to meet the said apprehension. Hence, the following order :-

ORDER

- (i) Appeal is allowed.
- (ii) Appellant be released on bail in connection with Crime No. 195/2022 registered with CIDCO Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 143, 147, 148, 149, 120(B), 201, 114 of Indian Penal Code and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act on furnishing PB and SB of Rs. 30,000/- (Rs. Thirty Thousand only) with one/two sureties in the like amount.
- (iii) He shall on enter the jurisdiction of concerned police station till recording of evidence of informant and eye witness.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.

(vi) He is further directed to cooperate the investigating agency for further investigation.

(vii) Observations in this order are made for limited purpose of decision of application and that Trial Court shall not get influenced by same.

(R. M. JOSHI)
Judge

dyb