

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.596 OF 2023

Akash Vitthalrao Satav,
Age 24 yrs., Occ. Labour,
R/o Bedki Nagar, Thakur Galli,
Kalamnuri, Dist. Hingoli.

... Appellant

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli.
- 2 Kanchan w/o Vikas Kamble,
Age 45 yrs., Occ. Household,
Green Park, Kalamnuri,
Tq. Kalamnuri, Dist. Hingoli.

... Respondents

...

Mr. N.S. Ghanekar, Advocate for appellant

Mr. A.M. Phule, APP for respondent No.1

Ms. Uma S. Bhosale, Advocate (appointed) for respondent No.2

...

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

DATE : 24th AUGUST, 2023

JUDGMENT : **(PER : SMT. VIBHA KANKANWADI, J.)**

1 The appellant – original accused No.2 challenges rejection of his
bail application under Section 439 of the Code of Criminal Procedure, 1973
filed at Exh.17 in Special Case No.58/2022 by learned Special Judge, under
the Atrocities Act/Additional Sessions Judge-3, Hingoli on 14.06.2023 by
filing this appeal under Section 14-A(2) of the Code of Criminal Procedure.

2 **Admit.**

3 Heard learned Advocate Mr. N.S. Ghanekar for the appellant,
learned APP Mr. A.M. Phule for respondent No.1 and learned appointed
Advocate Ms. Uma S. Bhosale for respondent No.2.

4 It has been vehemently submitted on behalf of the appellant that
the accused/appellant came to be arrested in this case on 15.06.2022 and the
charge sheet has been filed on 08.09.2022. Therefore, the investigation is
over and the further physical custody of the appellant is not required. The
learned Special Judge has not considered the role attributed to the present
appellant and appears to have been carried away by the role assigned to
original accused No.1. Perusal of the First Information Report would show
that the same was filed by the mother of deceased Nikesh. She has stated
that Nikesh left the house around 9.00 p.m. on 13.06.2022 by informing the

mother that he is going out for walk. After preparation of the food she gave him call, whereupon he answered that he is near Mahadeo Temple, Green Park and would come after a while. She thereafter waited till 11.45 p.m. and again gave call to Nikesh. He answered and told that he is coming. She again waited for 15 minutes and gave call, but he did not pick up. Therefore, she contacted friends of her son, but none of them told that Nikesh is with them. Around 1.20 a.m. after informing her daughter she went to search Nikesh. She found his motorcycle near the temple area, but he could not be found and, therefore, she made inquiry with a person. When she had taken a second road towards the temple, she could find her son lying on the ground in injured condition around 10 feet from the motorcycle. The blood was oozing out of his nostrils and ears. She could also find a stone having blood stains on it by the side of her son. She called her daughter and the friends of son. At the same time, police patrolling vehicle came and then they took Nikesh to Government Hospital, Kalamnuri. After examining him the Doctor declared him dead. The informant mother had lodged the First Information Report against unknown person. Thereafter, during the course of the investigation statements of witnesses have been recorded and witness Tushar Pawar, who runs a wine bar, disclosed that there was dispute between the present appellant, original accused No.1 and deceased. However, he says that he had seen them leaving the bar around 11.45 p.m. But he does not

say, in which directions the deceased as well as the accused persons went. In the supplementary statement and statement under Section 164 of the Code of Criminal Procedure the family members of deceased are saying that there was dispute between accused No.1 and deceased in 2019 and the father of the deceased had filed case against said accused No.1 and thereafter accused No.1 and Kishor had kept the status on their WhatsApp giving threats to kill. This evidence does not give role to the present appellant and, therefore, his application under Section 439 of the Code of Criminal Procedure ought to have been allowed by the learned Special Judge. The appellant is ready to abide by the terms of the bail.

5 Per contra, the learned APP and learned Advocate Ms. Uma S. Bhosale, appointed for the original informant/respondent No.2, submitted that the charge sheet would show that there is ample evidence against the present appellant. His presence can be spelt from the statement of witness Tushar. According to his statement, he had seen both the accused and deceased quarreling around 11.45 p.m. and then his dead body has been found around 1.20 a.m. The First Information Report is well supported by the statement of the daughter of the informant, statement of friends of the deceased, who were called by the informant, and statement of Police Hawaldar Mr. Karhale as well as Police Constable Mr. Jagtap, who were on

patrolling duty and had reached the spot around 1.20 a.m. The learned Special Judge has rightly rejected the application on the ground that on the earlier occasion messages giving threats to kill were kept on WhatsApp status and, therefore, it indicates that there is danger to the life of the witnesses.

6 At this stage, we are required to consider the evidence that has been collected by way of charge sheet. The First Information Report lodged by the mother of the deceased is against unknown person. It appears that except statement of Tushar Pawar nobody has seen the deceased alive in the company of the accused. Statement of said Tushar Pawar would show that around 7.30 p.m. the present appellant and original accused No.1 had gone to his wine bar for drinking liquor and after purchasing liquor they were consuming it in the bar itself. After a while deceased came, he sat on a different table. He also consumed liquor and by paying the bill he went away. Both the accused were in the bar itself by that time and then he says that thereafter, after about an hour deceased came back, again purchased liquor and after a while there was quarrel between deceased and both the accused. They were abusing each other. Witness Tushar told them that it is a time to close the shop and after separating them he literally sent them out of the bar, and then there is First Information Report, which says that around 1.20 a.m. the mother found the dead body of deceased and then she had

called her daughter and the friends of deceased and in the meantime even the patrolling party arrived. It is not revealing from the charge sheet, at this stage, as to how deceased went up to the spot where his dead body was found.

7 The application filed under Section 439 of the Code of Criminal Procedure by the present appellant has been rejected on the ground that earlier threats were given to the deceased and family members. However, if we consider the copy of the complaint application dated 29.04.2019 and the First Information Report as well as statement of the father of deceased, that would show that, that complaint was against original accused No.1, one Kishor Bhalerao and Vicky Chavan. It is not against the present appellant. With the said evidence on record the learned Special Judge ought not to have rejected the application. There was no question of bar under Section 18 or 18-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, for the application under Section 439 of the Code of Criminal Procedure and, therefore, the available evidence ought to have been considered by the learned Special Judge. We have taken note of the evidence which is collected against the present appellant at this stage and, therefore, we are of the opinion that the appellant deserves to be released on bail by allowing his appeal. Hence, following order.

ORDER

1 Criminal Appeal stands allowed.

2 The order passed by learned Special Judge, under the Atrocities Act/Additional Sessions Judge-3, Hingoli, Dist. Hingoli in Special Case No.58/2022 dated 14.06.2023, is hereby set aside. Said application stands allowed.

3 The appellant **Akash Vitthalrao Satav**, who has been arrested in connection with Crime No.249/2022 dated 14.06.2022 registered with Kalamnuri Police Station, Dist. Hingoli, for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, 1860 and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, be released on P.R. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

4 Appellant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

5 Appellant shall cooperate with the investigation.

6 The fees of the appointed Advocate Ms. Uma S. Bhosale is quantified at Rs.5,000/- (Rupees Five Thousand only).

7 Bail before Trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)

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