

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.662 OF 2023

Santosh S/o. Parmeshwar Hipparge,
Age : 35 years, Occu. : Agriculture,
R/o. Yenegur, Tq. Omerga,
Dist. Osmanabad.

... Appellant.

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Bembali,
Tq. & Dist. Osmanabad.
2. Somnath Gopal Kamble,
Age : 31 years, Occu. : Labour,
R/o. Dattnagar Murud,
Tq. & Dist. Latur.

... Respondents.

*(Resp.No.2 is victim -
brother of deceased)*

...

Advocate for Appellant : Mr. Vivekanand B. Deshmukh
APP for Respondent - State : Mr. S. D. Ghayal
Advocate for Respondent No.2 : Mr. Swapnil Dargad (Appointed)

...

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

DATED : 29th AUGUST, 2023

PER COURT :

1. Present appeal has been filed under Section 14-A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short hereinafter referred to as "The Atrocities Act") to challenge the order of rejection of bail application filed at Exh.14 in Special Case No.88/2022 by learned

Special Judge under the Atrocities Act/Additional Sessions Judge, Osmanabad on 07.07.2023. The said application was filed by the present appellant under section 439 of the Code of Criminal Procedure, 1973 and it came to be rejected on 07.07.2023. The appellant has been arrested in connection with Crime No.191/2022 registered with Bembali Police Station, Tq. and Dist. Osmanabad for the offence punishable under Section 302 of the Indian Penal Code and Section 3(1)(w)(v) of the Atrocities Act.

2. **Admit.**

3. Heard learned Advocate Mr. Deshmukh for the appellant, learned APP Mr. Ghayal for State and learned Advocate Mr.Dargad for Respondent No.2.

4. It has been vehemently submitted on behalf of the appellant that the learned trial Judge has not considered the bail application within the principles under which an application under section 439 of Cr.P.C. is required to be dealt with. The appellant came to be arrested on 22.08.2022 in respect of incident alleged to have occurred on 21.08.2022. The FIR has been lodged by one Anil Suryakant Godase, who had given his shed on rent to deceased Kavita for running a hotel. Kavita was found dead around 11.00

a.m. on 21.08.2022. The present respondent no.2 is the brother of deceased Kavita. It is not in dispute that deceased was member of scheduled caste, but it has not been considered by the learned trial Judge that the present appellant was stated to be staying with her. The case appears to be resting on the circumstantial evidence and the learned Special Judge in a way appreciated the statements under section 161 and 164 of Cr.P.C.. Merely because, the present appellant is stated to have taken hotel along with deceased for running it and he was staying with her, it cannot be said that he has committed murder of deceased with the evidence that has been collected. The appellant need not be kept behind bars and the trial Judge ought to have utilized the discretion in judicious way. The said order deserves to be set aside. The charge-sheet is filed and even the charge is framed, but it will take long time to conclude the trial. The appellant is ready to abide by the terms of the bail.

5. Per contra, the learned APP strongly objected the appeal and supported the reasons given by the learned Additional Sessions Judge. He submitted that evidence that has been collected against the appellant is strong enough. It is evident from the charge-sheet that the present appellant was staying with deceased. He was seen in the company of the deceased and the witnesses to that effect are one Mukthar Sayyed and Nanasaheb

Jadhav. Post mortem report shows that the probable cause of death is due to multiple stab injuries. The present appellant has discovered the weapon under section 27 of the Indian Evidence Act. Therefore, when there is strong evidence against the appellant, the learned trial Judge has rightly rejected the application.

6. The brother of deceased who can be said to be victim under section 2(1)(ec) of the Atrocities Act, though served, had not appeared and therefore learned Advocate Mr. Dargad was appointed to represent his cause. He has strongly opposed the appeal. The said brother had also opposed the application before the learned Special Judge.

7. Learned Advocate Mr. Dargad submits that the age of the injuries as stated in post mortem report is within 24 hours and therefore taking into consideration the said time gap, the accused – appellant, who was in the company of deceased was required to explain the circumstances in which deceased was found dead. He was staying with the deceased and running a hotel. There are statements of the witnesses which support the prosecution story and therefore the appellant does not deserve to be released on bail.

8. At the outset, it is to be noted that the incident alleged to have occurred in the intervening night of 20.08.2022 to 10:00 a.m. of 21.08.2022. The post mortem report shows that there were multiple injuries as stated in column no.17 of the post mortem report and the probable cause of death is given as “due to excessive blood loss due to multiple stabbing”. Therefore, *prima facie* it can be said that it is a homicidal death.

9. The case of prosecution is depending on the circumstantial evidence. Nanasaheb Jadhav and Mukhtar Sayyed are the witnesses on whom it can be said that prosecution would rely. It would be for the trial court to consider them as to whether they are narrowing down the time gap and saying that they had seen the deceased alive with the accused. We would find that their statements have been recorded on 31.08.2022, when the incident has taken place on 21.08.2022. Therefore, it would depend upon the reason to be provided by the prosecution for the belated statements. The prosecution is relying upon last seen theory and alleged discovery of weapon. Under such circumstance, when it will take long time for trial to stand, we find that this is a fit case where the discretion ought to have been exercised by the learned Special Judge. In the nutshell, the appeal deserves to be allowed. Hence the following order:-

ORDER

- (i) The criminal appeal stands allowed.
- (ii) The order passed by learned Special Judge under the Atrocities Act/Additional Sessions Judge, Osmanabad on 07.07.2023 below Exh.14 in Special Case No.88/2022 stands set aside. The said application stands allowed.
- (iii) Appellant Santosh S/o. Parmeshwar Hipparge, who has been arrested in connection with Crime No.191/2022 registered with Bembali Police Station, Tq. and Dist. Osmanabad for the offence punishable under Section 302 of the Indian Penal Code and Section 3(2)(w)(v) of the Atrocities Act, be released on P.R. Bond of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.
- (iv) The appellant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.
- (v) Appellant shall cooperate with the investigation.

vi) Bail before the trial court.

(vii) The fees of the appointed Advocate Mr. Swapnil Dargad for the respondent no.2 is quantified at Rs.5,000/-.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)