

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.674 OF 2022

Namdeo Rambhau Angre

.. Appellant

Versus

The Police Inspector and others

.. Respondents

...

Mr. R. A. Jaiswal, Advocate for the appellant.

Mr. S. J. Salgare, APP for respondent No.1 – State.

Ms. Sunita G. Sonawane, Advocate for respondent Nos.2 and 3.

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

DATE : 30th March, 2023.

ORDER :-

1. Present appeal has been filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) to challenge the order passed in Criminal Bail Application No.1869 of 2021 passed by the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ahmednagar on 16.07.2022, thereby the said bail application came to be allowed and present respondent Nos.2 and 3 came to be released on bail under Section 439 of the Code of Criminal Procedure.

2. Present respondent Nos.2 and 3 are original accused Nos.1 and 3 in Crime No.839 of 2021 registered with Parner Police Station, Dist.

Ahmednagar for the offence punishable under Sections 302, 201 read with Section 34 of Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2) (va) of the Atrocities Act. They came to be arrested on 12.11.2021 respectively. Earlier they had filed bail application on 23.11.2021 under Section 439 of the Code of Criminal Procedure and the said application was allowed by the said Court on 09.12.2021. The present appellant - original informant had challenged the said order before this Court by filing Criminal Appeal No.125 of 2022. It was preferred mainly on the ground that the crime was under the Atrocities Act and there is no compliance under Section 15-A of the Atrocities Act. This Court by order dated 17.06.2022 set aside the order granting bail to those accused persons on 09.12.2021 and directed that the said Court should decide the said Bail Application No.1869 of 2021 after hearing the informant. The learned Special Judge has thereafter heard all the concerned parties and allowed the said bail application and granted the bail. Now, this order dated 16.07.2022 is again challenged by the informant in this appeal.

3. Heard learned Advocate Mr. R. A Jaiswal for the appellant, learned APP Mr. S. J. Salgare for respondent No.1 - State and learned Advocate Ms. Sunita G. Sonawane for respondent Nos.2 and 3.

4. It will not be out of place to mention here that after the impugned order was passed on 16.07.2022, the charge-sheet was filed

on 08.12.2022 and the said charge-sheet has been produced for perusal of this Court and, therefore, with the able assistance of all the concerned Advocates, we have gone through the material in the charge-sheet.

5. Perusal of the FIR lodged by the present appellant would show that deceased went missing since 02.11.2021. Deceased Arjun had gone along with one Yashwant Gunjal i.e. accused No.1 around 6.00 p.m. to Madura Hotel at Bhalwani for party. The said fact was also confirmed by sister-in-law of deceased Arjun around 8.00 to 8.15 p.m., but thereafter Arjun did not return. Therefore, a missing report was lodged. Thereafter Parner Police gave phone call to Arjun's brother Shamrao on 05.11.2021 that a dead body has been found within the jurisdiction of Wadgaon Amli near K.T. Dam and, therefore, he should identify the same. Accordingly, the relatives went and identified the dead body which was then sent for the postmortem. It was the contention of the present appellant that the accused persons were insisting for the re-transfer of the land, which was given by the father of accused No.1 in the name of deceased.

6. The evidence on record suggests that since about 17 years deceased Arjun was residing with accused No.1. Though it appears that deceased Arjun was member of Scheduled Caste and the accused persons are members of upper caste, yet deceased was residing in

the house of accused No.1. Even the land was transferred in the name of brother of the informant by the father of accused No.1 as he was considering mother of deceased as his sister. If such relations were there, even at this *prima facie* stage, we can say that there was no question of invoking the provisions of the Atrocities Act. The learned Special Judge has considered the documents, especially the postmortem report wherein it was stated that there was no external injury found and the probable cause of death was not given and therefore, it was observed that it cannot be taken as a case of homicidal death. We do not find that the learned Special judge erred in making those observations. Now, we are armed with the final cause of death certificate issued by the competent authority and the probable cause of death has been given as “death due to drowning”. Therefore, when there is *prima facie* evidence about the homicidal death, there is least possibility of invoking Section 302 of Indian Penal Code.

7. It also appears from the entire charge-sheet that the case of the prosecution is based on circumstantial evidence. No doubt it was informed to the relatives that Arjun would be going along with accused No.1 for a party, but it was around 6.00 p.m. of 02.11.2021 and the dead body was found on 05.11.2021. It was informed that they had gone for party to the Hotel at Bhalwani. The statement of

the owner of the said Hotel has been recorded. Witness Popat Rohakale states that Arjun and accused No.1 as well as Nilesh Nimse have gone to the hotel for party. The order was complied in respect of the eatables by witness Vishal Gitaram Rohakale. Both of them in their statement under Section 161 of the Code of Criminal Procedure have stated that those persons have brought liquor along with them and after consuming the liquor along with the non-veg items, Arjun left alone on motorcycle, but others were sitting for about one to one and half hours in the hotel. Therefore, their statements cannot be considered on the point of last seen together. With this kind of evidence, the learned Special Judge could not have kept the accused persons behind the bar. Another fact also to be noted is that the dead body was found in the canal so also the motorcycle on which deceased Arjun had left from the hotel and then the final cause of death is now coming as death due to drowning.

8. We do not find any perversity in the order passed by the learned Special Judge. There is no merit in the present appeal. It deserves to be dismissed. Accordingly, the appeal is dismissed.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm