

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

CRIMINAL APPEAL NO.779 OF 2023

DNYANESHWAR@ MAULI MADHAVRAO BANDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. S. S. Thombre, Advocate h/f Mr. M. S. Karad, Advocate for the
appellant
Mr. V. S. Badakh, APP for the respondent/State
Mr. A. P. Lohade, Advocate for respondent No. 2 (appointed)

CORAM : R. M. JOSHI, J.

DATE : 8th NOVEMBER , 2023

1. This appeal is filed under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'Atrocities Act') challenging order dated 04.08.2023 below Exh. 05 in Special Case No. 172/2023 passed by learned Additional Sessions Judge, Aurangabad rejecting application for regular bail in connection with Crime No. 0020 of 2023 registered with Bidkin Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code and Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. It is alleged in the FIR that there were disputes between his brother and accused-Laxman Shinde due to lodging of report against his

brother by Komal Shinde, daughter of Laxman of offences under IPC and POCSO Act. He alleged that on 19.01.2023 quarrel took place between accused persons and his brother at Anjali Hotel. It is his contention that on 20.01.2023 when he was on work at Paithan, at about 02.00 pm Contractor Sandip Nil received phone call and thereafter he asked informant to come with him to informant's house. When they reached at his house, he saw many people gathered there. People gathered there told informant that his brother was murdered at Madhav Sheres' *gayran* land. When he went to there, he saw without beheaded was lying near boundary wall. He identified the said body to be of his brother. Then police personnel and villagers went to search for head of body but head was not found. As there were previous disputes between the accused and his brother, he suspected that these accused person or unknown person has killed his brother and beheaded him. Hence, this report.

3. Learned counsel for the appellant submits that though the offence is serious in nature, however, there is *prima facie* no material on record to connect the appellant with this crime. It is submitted that in the charge-sheet except for the statements of two witnesses who claim that the appellant has made extra judicial confession to them there is no other evidence. It is submitted that the said statements of witnesses are recorded belatedly and even otherwise the evidence of extra judicial

confession is weak in nature and unless corroborated by other material on record cannot be considered. By referring to the CA report it is stated that the clothes seized of the appellant do not show any blood stain as such the said recovery is also not incriminating against the him.

4. Learned APP and learned counsel for the informant opposed the appeal by contending that the offence is serious in nature. They relied upon statements of Savita Pawar who states that the appellant herein was fed up with the deceased and hence he had motive to commit his murder. Reference is also made to the statement of Gautam and Nilabai which according to them are sufficient to *prima face* consider the involvement of the appellant in this crime.

5. First information report indicates that the informant had no personal knowledge about the incident in question. Admittedly, there is no eye witness to the incident in which deceased Sandip died. Thus, this is a case of circumstantial evidence. In first information report the allegations are made against the co-accused that owing to the relationship co-accused had motive to commit murder of the deceased. However, *prima face* no such strong motive is attributable to the appellant. There is no incriminating recovery at the instance of the appellant. The statements of the witnesses to whom the appellant has

allegedly made extra judicial confession of the crime are recorded after 8 days of the incident. Even statement of the witness that the appellant herein took him to the spot of the incident and shown dead body is also not acceptable at this stage for want of corroboration. Considering non disclosure of the same immediately to any other person. *Prima facie* this Court is of the view that the evidence against the appellant is not sufficient to attribute motive against him. So also, there is no other overwhelming circumstance against him to connect him with this crime. The alleged recovery of iron rod at the instance of the appellant is not incriminating as no blood stains are found even thereon. In this circumstances, there is no propriety in denying bail to the appellant. There are no criminal antecedents against the appellant and he is not likely to flee from justice. Above observations are restricted to decision of present application and the trial Court is not bound by the same. Hence the following order:

ORDER

(i) Appeal is allowed.

(ii) The appellant be released on bail in connection with Crime No.0020/2023 registered with Bidkin Police Station, Dist. Aurangabad for the offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on furnishing PR Bond of Rs.30,000/- (Rs. Thirty Thousand only) with one solvent surety in the like amount.

- (iii) He shall not contact the witnesses directly or indirectly.
- (iv) He shall not interfere with the evidence in any manner whatsoever.
- (v) Fees of the appointed counsel is quantified at Rs. 6000/- and it is to be paid by the High Court Legal Services Authority, Sub Committee, Aurangabad.
- (vi) Bail before the Trial Court.

(R. M. JOSHI, J.)

ssp