

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 798 OF 2023

Sarsabai w/o Vithoba Babar

Appellant

Versus

The State of Maharashtra & another

Respondents

Mr. R. V. Gore, Advocate for the appellant.

Mr. S. P. Sonpawale, APP for the State.

Mr. S. A. Jadhav, Advocate (appointed) for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 27th OCTOBER, 2023.

PER COURT :

1. This appeal takes exception to the order passed by learned Additional Sessions Judge 2, Aurangabad, below Exhibit 3 in Special Case No. 284/2023 rejecting regular bail to the appellant in connection with Crime No. 0130/2023 registered with Bidkin Police Station, Dist. Aurangabad for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and Sections 3(2), 3(v) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. First Information Report shows that the sister of deceased lodged report to the police stating that the deceased had

illicit relations with the present appellant. On 15th April, 2023, he left home for visiting her house. On 16th April, 2023, at around 8.30 am, she came to know about deceased being killed by the present appellant and co-accused.

3. Learned counsel for appellant submits that investigation into the crime is over and charge-sheet is filed. By referring to the statement of two eye-witnesses of the incident, it is submitted that eye-witness Amol in his statement under Section 161 of Code of Criminal Procedure has not attributed any role to the present appellant of causing assault on the deceased with stick whereas in his statement under Section 164 of Code of Criminal Procedure, he referred the name of appellant as assailant without mentioning particulars. By referring to the statement of another witness, Ajay, it is submitted that Ajay never referred to the presence of present appellant at the spot and as assailant. Thus, it is his contention that there is no evidence to connect present appellant with the offence punishable under Section 302 of Indian Penal Code.

4. Learned counsel for the informant opposed the appeal by contending that though the incident has commenced at around 7.30

am, it was witnessed at that time by Amol whereas Ajay came to the spot at around 8.30 am. Thus it is his contention that inconsistencies in their statements is natural as the assailants fled from the spot. It is his submission that appellant and co-accused came together and caused assault on the deceased and hence it is not a fit case for grant of bail. He further submits that the deceased belonged to Scheduled Caste community and hence offence committed against him could not be taken lightly and hence there is no ground for grant of bail. Learned APP also opposed the appeal by referring to the statements on record and the PM notes which indicate that death of the deceased is caused due to head injury.

5. At this stage, the Court is required to consider as to whether there is any prima facie evidence to show involvement of the appellant in offence punishable under Section 302 of Indian Penal Code. Prima facie perusal of the charge-sheet indicates that two persons have witnessed the incident at different times. Witness Amol in his statement before police claims that appellant was present at the spot along with co-accused who were holding sticks and they caused assault on the deceased with the said sticks. The statement of Ajay also indicates that he has seen another co-accused assaulting

deceased though he was lying in injured condition. It is thus clear from the statements of these two witnesses that there is no allegation against present appellant that she had assaulted deceased with stick or is responsible for the injuries caused to him. Pertinently, as per the case of prosecution, the applicant is said to have illicit relations with the deceased. Apparently, there is no reason for her to kill him. Appellant is a lady and in view of aforesaid facts, she is entitled to bail. Hence, the following order :-

ORDER

- (i) Appeal is allowed.
- (ii) Appellant be released on bail in connection with Crime No. 0130/2023, registered with Bidkin Police Station, Dist. Aurangabad, for the offences punishable under Section 302 read with Section 34 of Indian Penal Code and Sections 3(2), 3(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, on furnishing PB and SB of Rs. 30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount.
- (ii) She shall attend the concerned police station once in a week.

(iii) She shall not contact the witnesses directly or indirectly.

(iv) She shall not interfere with the evidence in any manner whatsoever.

(v) She is further directed to cooperate the investigating agency for further investigation.

(vi) Fees of the appointed counsel is quantified at Rs. 6,000/-.

(R. M. JOSHI)
Judge

dyb