

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 815 OF 2022

Rajendra Sahebrao Kokane,
Age : 37 Years, Occu. : Nil,
R/o. Pathare Khurd, Tal. Rahuri,
Dist. Ahmednagar

... Appellant.

Versus

1. The State of Maharashtra
Through its
Shrirampur Taluka Police Station,
Shrirampur, Dist. Ahmednagar.
2. Priyanka Bhausahab Pathare,
Age : 32 Years, Occu. : Agriculturist,
R/o. Hadaki, Pathare Shivar,
Tal. Rahuri, Dist. Ahmednagar

... Respondents.

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Mr. Vijay B. Patil, Advocate for Appellant.

Mr. R. V. Dasalkar, APP for Respondent No.1 – State.

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Respondent No.2.

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

DATE : 09 JANUARY 2023.

JUDGMENT (PER ABHAY S. WAGHWASE, J.) :

. Admit.

2. The instant proceeding is at the instance of accused, i.e. by invoking section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevision of Atrocities) Act, 1989 (SC & ST Act). His application for granting

bail in connection with Crime No.I-152 of 2022 registered at Shrirampur Taluka Police Station, Shrirampur, for commission of offence under sections 302 and 201 of Indian Penal Code (IPC) along with Section 3(2)(va) of SC & ST Act, came to be rejected by the learned Special Judge under the Atrocities Act/Additional Sessions Judge, Shrirampur, Dist. Ahmednagar.

3. It is submitted that appellant is falsely involved on the basis of false and afterthought complaint. It is pointed out that, there are allegations that appellant initially hit deceased Ashok, i.e. husband of complainant and thereafter pushed him in river and thereby committed murder. It is pointed out that, there is no incriminating material whatsoever for involving present appellant. That, there is no evidence either direct or circumstantial to connect present appellant to the death of Ashok. That, involvement is apparently on suspicion and as such there is no foundation at all for arraigning him as accused. It is pointed out that deceased was found in the river and autopsy Doctor had opined death to be due to head injury and drowning. Thus, it is his submission that there is every possibility of deceased accidentally falling in the river.

4. It is submitted that appellant and deceased were close friends and it has so come in the evidence of witnesses. Therefore, there was no question of committing murder only because deceased belongs to scheduled caste. That, investigation is over, but there is no material in the charge-sheet

whatsoever to establish either charge of murder or commission of offence under the provisions of SC & ST Act. Accused is languishing in jail in a case wherein there is nothing to connect him with alleged offence. It is submitted that the learned trial Judge has failed to consider the documents on record and has refused to grant bail. Lastly, it is submitted that appellant will abide with all conditions imposed by this Court and he is ready to give undertaking of any nature.

5. While opposing the appeal, learned APP pointed out that appellant was seen in the company of deceased. Complainant – wife had seen her husband in the company of accused and thereafter he did not return. It is pointed out that only on the tip of search of accused was undertaken in the river and the dead body was found and taken out of water. Moreover, investigation revealed that mobile phone as well as motorcycle of deceased was in the custody of accused/appellant. Therefore, with such strong evidence, the learned Special Judge committed no error in rejecting the bail application. There is every possibility of appellant misusing the liberty and further indulge in tampering the evidence. There are allegations of commission of offence under SC & ST Act. For the more reason, he submits that it is not a fit case for grant of bail at all.

6. Having heard both the sides, we have scrutinized entire documents placed before us.

7. It is emerging that law was set in motion by wife of deceased Ashok on 18.05.2022. FIR shows that, it is informed that deceased Ashok was a mason. Complainant herself stated that her husband was friend of present appellant and they used to consume liquor together. It is informed that, on 14.05.2022, her husband went on his own motorcycle with appellant, but he did not return home. According to informant, after waiting for sufficient time, as her husband did not return, she made telephone call to accused at around 12:00 'o' clock at night and at that time, it is her allegation that, appellant informed that Ashok was with him. When he did not return, second call was made by informant after 15 to 20 minutes and at that time, it is alleged that appellant denied that her husband was with him and therefore, she and her nephew visited the house of appellant. It is stated that he was hiding in the bathroom and his wife brought him out. At that time, mobile of deceased was in the hands of appellant and it was forcibly taken away by her nephew and on detailed inquiry, appellant asked to undertake search in the river. Therefore, on the next day, search was taken in the river with the help of divers of the village, and body of Ashok was taken out of the water. According to complainant, as her husband left the company of appellant and he was found dead in the water, she has held him responsible for the death of her husband. It seems that investigating machinery has carried out investigation during which statements of witnesses are recorded under section 161 of Cr.P.C.

8. Post-mortem report shows that deceased died because of drowning associated with head injury. It is tried to be submitted by learned counsel for complainant that deceased did not know swimming and therefore, there is no question of he going into the river for swimming as is tried to be suggested by appellant.

9. It needs to be appreciated that according to informant deceased went on his motorcycle in the morning of 14.05.2022. Dead body of Ashok was taken out of the water on next day, i.e. around 1:00 p.m. to 2.00 p.m. as is evident from the inquest panchanama. Admittedly, accused was available in his own house. On court query, learned APP informs that CDR is not collected by Investigating Officer, to establish alleged conversation between complainant and accused. Therefore, allegations levelled in the complaint about the telephonic talk with accused are at this stage at least without foundation. Apparently, complaint is lodged on suspicion.

10. Though statements of witnesses are recorded, they are all on the line that deceased Ashok went missing and therefore, search was undertaken and his dead body was found in the river water. It is pertinent to note that, autopsy Doctor has opined that death was due to drowning with head injury. Therefore, it is not clear at this stage as to whether head injury was caused first followed by alleged pushing or whether deceased himself went in the

water for swimming and suffered injury and got drowned. Spot panchanama shows that footwear and clothes of deceased were found to be outside the river water. Such material further creates doubt about being first hit and then pushed in the water. All these things which seems to be crucial would be dealt and decided and appreciated at the time of trial.

11. On the strength of FIR, investigating machinery seems to have invoked commission of offence under SC & ST Act. However, from the very FIR, it is evident that accused and deceased were close friends and they used to go for drinks together and therefore, it can safely be inferred that there was no ill will or hatred towards said community and with such sole intention that as deceased was from scheduled caste community, only on that count he was done to death. Resultantly, provisions under section 3(2)(va) of SC and ST Act *prima facie* do not get attracted.

12. Taking all above material into account and there being some shortcomings in the record, we do not think that accused should be kept languishing in the jail for indefinite period. He can very well be set at liberty by imposing stringent conditions. Accordingly, we proceed to allow the appeal and pass following order :-

ORDER

- (i) The criminal appeal stands allowed.

- (ii) The order passed by the learned Special Judge under the Atrocities Act/Additional Sessions Judge, Shrirampur, below Exhibit-5 in Special Case No.23 of 2022, dated 03.10.2022 stands set aside. The application stands allowed.
- (iii) Appellant - Rajendra Sahebrao Kokane, who have been arrested in connection with Crime No.I-152 of 2022 registered with Shrirampur Taluka Police Station, Shrirampur, for the offence punishable under section 302 and 201 of IPC along with Section 3(2)(va) of SC & ST Act, be released on P.R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- (iv) The appellant shall not enter the jurisdiction of village Hadaki, Pathare Shivar, Tq. Rahuri, Dist. Ahmednagar, till the conclusion of trial. He should reside elsewhere, and before submission of bail papers, the appellant should give complete address of his proposed residence with his mobile number to the trial Court as well as to the Investigating Officer.
- (v) He shall not tamper with the evidence of the prosecution in any manner.
- (vi) He shall not indulge in any criminal activity.
- (vii) Bail before the Trial Court.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)