

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 853 OF 2023

Prashant Dashrath Waghmode

...Appellant

Versus

1. The State of Maharashtra
2. Kamal Girdhari Tapghale

...Respondents

Mr. P. P. More, Advocate for the Appellant.

Mr. S. P. Sonpawale, APP for Respondent No. 1.

Mr. R. C. Bramhankar, Advocate for Respondent No. 2
(appointed).

CORAM : R.M. JOSHI, J.

RESERVED ON : OCTOBER 31, 2023
PRONOUNCED ON : NOVEMBER 02, 2023

ORDER:

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 01.09.2023 passed by learned Special Judge under S.C.S.T. Act and Additional Sessions Judge, Latur rejecting application for regular bail in connection with Crime No. 167 of 2023 registered with Renapur Police Station, Dist. Latur for the offences punishable under Sections 302, 326, 294, 323, 324, 452, 504, 506 read with Section 34 of Indian

Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act.

2. First informant is wife of deceased Girdhari who was assaulted by Appellant and his maternal uncle Laxman on 02.06.2023 for recovery of money lend by latter. It is alleged that on that day at around 07.30 am accused came in her house and insisted for the repayment of money and Laxman assaulted her husband with iron rod whereas present Appellant caused assault with stick on his hands and back. It is also alleged that those who intervened in the assault, were also beaten by Laxman. It is also found by the informant that after beating Girdhari, accused went out of house and at market place, they abused and assaulted her sons and nephews. Girdhari died on 03.06.2023 and hence, offence punishable under Section 302 of IPC is made applicable against them.

3. Learned Counsel for the Appellant submits that Appellant is aged about 19 years with no criminal antecedents. By referring to the FIR as well as statements of witnesses, it is stated that the allegations against him is of causing assault with

stick on non-vital part of the body of deceased. By referring to the post mortem report, it is submitted that there is no opinion given by the medical officer about the cause of death of deceased by assault. It is submitted that the deceased had undergone cardiac pacemaker implantation and was a heart patient and hence, death cannot be attributed solely to the injuries caused to him. It is his submission that after filing of the charge-sheet and since there is no evidence to connect present Appellant with the offence of murder, he is entitled for bail.

4. Learned appointed Counsel for the Respondent No. 2/informant and learned APP opposed the said contention by referring to the FIR and the post moretem notes indicating causing of number of injuries on the person of deceased. They submit that the offence is serious as the co-accused Laxman is money lender against whom number of offences are registered. It is submitted that both accused persons came together and caused assault on the deceased and owing to the number of injuries caused to him, the cause of death is said assault only. It is submitted that the offence has been

committed against the member of scheduled caste community and having regard to the seriousness of offence, it is a fit case for rejection of bail.

5. Incident in question has occurred on 02.06.2023 at around 07.00 am wherein the Appellant and co-accused caused assault on deceased. *Prima facie* perusal of medical papers of hospital concern indicates that deceased was admitted in hospital on 02.06.2023 at 05.10 pm and died on 03.06.2023 on 01.30 am. The deceased seems to be heart patient and had undergone cardiac pacemaker implantation. Though post mortem notes indicate that 14 injuries were caused on the person of deceased, there is no opinion with regard to the probable cause of death that the death is result of these injuries. What is recorded is that there is evidence of multiple injuries. As far as present Appellant is concerned, allegation against him is that he caused assault on the hand and legs of deceased with stick. The said injuries are not caused on vital part of the body.

6. Allegations of prosecution is that co-accused had to recover money from the deceased and for that

purpose he was assaulted. It is claimed that the said accused is money lender and against him different crimes are registered. There are no such allegations against present Appellant. *Prima facie* injuries caused by the Appellant on the leg and back of deceased cannot be said to have resulted into his death or has become cause of death of deceased. These observations are inevitable in view of fact that the deceased had undergone the cardiac pacemaker implantation. Though the incident in question has occurred at 07.00 am, he admitted in the hospital at 05.10 pm. This fact also goes in favour of the Appellant as there is no allegation against him of causing any injury on any vital part of the body of deceased. Similarly, no intention can be attributed to the Appellant who had otherwise no reason to cause assault on deceased.

7. Appellant is aged 19 years with no criminal antecedents. Keeping him behind the bar would only lead to bring him in the company of harden criminals. *Prima facie* doubt is created as to whether injuries caused by the Appellant could have become the cause of death of deceased. Moreover, objections raised against co-

accused may not get attracted against this Appellant. Now investigation into the crime is over with filing of charge-sheet. Appellant is not likely to flee from justice. As per the case of prosecution itself the Appellant does not hail from the same village that of informant. Hence, with appropriate conditions, bail deserves to be allowed.

7. Hence, order:

O R D E R

- (i) Criminal Appeal is allowed.
- (ii) The Appellant be released on bail in connection with Crime No. 167 of 2023 registered with Renapur Police Station, Dist. Latur for the offences punishable under Sections 302, 326, 294, 323, 324, 452, 504, 506 read with Section 34 of Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(2)(va) of the Atrocities Act on furnishing PB and SB of Rs. 30,000 (Rupees Thirty Thousand Only) with one or two solvent surety in the like amount.
- (iii) He shall not enter the jurisdiction of village Raje Nagar, Renapur till conclusion of trial.
- (iv) He shall not contact and pressurize the

witnesses directly or indirectly.

(v) He shall not interfere with the evidence in any manner whatsoever.

(vi) Bail before trial Court.

(vii) Fees of Mr. R. C. Bramhankar, learned Counsel appointed for Respondent No. 2, is quantified @ Rs. 10,000/- (Rupees Ten Thousand Only) to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(R. M. JOSHI, J.)

Malani