



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 896 OF 2023

Kapil Panditrao Telke

....Appellant

VERSUS

The State Of Maharashtra And Another

...Respondent

...

Mr. R. S. Deshmukh, Senior Advocate a/w Ms. Y. A. Namde i/by Mr. D. R. Deshmukh, Advocate for Appellant

Mr. S. B. Jadhav, APP for Respondents

Mr. N. N. Bhagwat, Advocate for Respondent No. 2 (appointed)

...

CORAM : R.M. JOSHI, J

DATE : DECEMBER 20, 2023

PER COURT :

1. This Appeal is filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act seeking regular bail in connection with Crime No. 267/2023 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 302, 364 read with Section 34 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. First informant is the police patil who has reported that on 15.04.2023 at around 09.30 am he was informed that unidentified dead body is found in the

agricultural field of Satish More. Informant visited the spot and found the dead body of male aged about 25-30 years with injuries on his person including ligature mark over his neck. Injuries were also found on the back on his head. First information report came to be lodged against unknown persons. During the course of investigation, co-accused Lalit Sharma and present Appellant are arrested on 28.04.2023. After conclusion of investigation, charge-sheet is filed on 13.06.2023. Appellant is seeking regular bail.

3. Learned Senior Counsel appearing for the Appellant submits that except for the statement of co-accused which is not admissible in evidence there is absolutely no evidence to connect Appellant with this crime. It is his further submission that column 17 of pm report indicates that there is single ligature mark which rules out the possibility of deceased being strangled by more than one person. He submits that merely because offence is serious in nature, without there being any evidence to show complicity of the Appellant in this crime he deserves to be enlarged on bail.

4. Learned Counsel for the informant and learned APP opposed the Appeal by citing seriousness of the offence. According to them, it is a case of circumstantial evidence and as such, it cannot be accepted that there could be a direct evidence showing involvement of the Appellant in crime. They mainly relied upon the transcript of the CCTV indicating presence of the Appellant along with co-accused and deceased. They were found being shopping at two places i.e. 09.43 pm in a shop as well as 11.10 pm in medical shop. It is their contention that there is recovery of motorcycle used in the crime from present Appellant and this evidence sufficiently connects him with the crime in question. Learned APP submits that Appellant has criminal history.

In response thereto, learned Senior Counsel for Appellant states that except for the present offence, there is only one offence registered against him punishable under Section 307 of IPC allegedly committed in the year 2019. He further submits that in the said crime Appellant was released on bail.

5. No doubt, offence is serious in nature, however, merely because the offence is serious in nature, bail cannot be rejected if *prima facie* Court finds no evidence to connect Appellant with this crime. Admittedly, no one has witnessed the incident in question, as such, prosecution will have to rely upon the circumstantial evidence to prove the charge against accused persons. As far as present Appellant is concerned, there is no motive seen against him for committing murder of deceased. Except for the statement of Appellant himself, which is not admissible in evidence, there is no evidence to indicate any motive for him.

6. So far as other evidence collected during the course of investigation is concerned, there is recovery of motorcycle from the Appellant which would not be incriminating for the purpose of actual incident of assault because *prima facie* there is no evidence to show that after 11.10 pm Appellant continued to be in the company of deceased and co-accused. Apart from this, though there is recovery of cloths of the Appellant, perusal of the panchnama of the said

recovery does not show any blood stains or even red spots on the said clothes in order to call it as incriminating recovery. Thus, at this stage, except for the evidence which shows that the Appellant was found in the company of the deceased up to 11.10 pm, there is no evidence to show his involvement in the actual assault. There is not even approximate time recorded by the medical officer indicating the time of death. In such circumstances, in absence of any other evidence to show that Appellant to be continued in the company of deceased, evidence of last seen which may have its own effect in trial but not enough to reject bail. The contention of learned APP about the criminal history of the Appellant cannot become sole ground for rejection of Appeal for bail more particularly in view of the fact that there is *prima facie* no material to connect Appellant in crime in question.

7. In view of above, Appellant deserves to be enlarged on bail. Hence, the order:

O R D E R

(i) Appeal is allowed.

(ii) Appellant be released on bail in connection

with Crime No. 267/2023 registered with Nanded Rural Police Station, Dist. Nanded for the offences punishable under Sections 302, 364 read with Section 34 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on furnishing PB & SB bond of Rs. 25,000 (Rupees Twenty Five Thousand Only) with one solvent surety in the like amount.

- (iii) He shall attend the concerned police station as and when required.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.
- (vi) Fees of Mr. N. N. Bhagwat, learned Counsel appointed for Respondent No. 2, is quantified @ Rs. 6000/- (Rupees Six Thousand Only) to be paid by High Court Legal Service Sub-Committee, Aurangabad.

(R. M. JOSHI, J.)

Malani