



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 959 OF 2023

Akshay Hanumant Katore

...Appellant

VERSUS

The State Of Maharashtra And Another

...Respondents

...

Mr. R. R. Karpe, Advocate for the Appellant.

Mr. S. B. Jadhav, APP, for the Respondent No.1 – State.

Ms. Harsha Lomte, Advocate for Respondent No. 2
(appointed).

Mr. M. B. Sandanshiv, Advocate for the Respondent No.2.

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CORAM : R.M. JOSHI, J

DATE : NOVEMBER 29, 2023

PER COURT :

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 26.09.2023 passed by learned Additional Sessions Judge, Bhoom rejecting application for regular bail in connection with Crime No. 150 of 2023 registered with Vashi Police Station, Dist. Osmanabad for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code and Section 3(2)(va) of the Atrocities Act.

2. Report came to be lodged on 17.05.2023 when

the informant, who is father of the deceased, got information from the police about the death of deceased. It is further claimed that he learnt from police that on 15.05.2023 at around 12 to 12.30 am when deceased and co-accused were fighting under the influence of liquor, deceased abused Appellant in filthy language. At that time, Appellant and co-accused assaulted deceased with wooden log. So also co-accused Shubham Yekade assaulted deceased with fist and kick blows. It is further claimed that as deceased died due to that assault, accused persons wrapped deceased in a blanket and threw his body in a well near Beleshwar Mandir.

3. Learned Counsel for the Appellant submits that even if the evidence collected during the course of investigation is accepted as it is, no case of offence of murder is made out against him. According to him, there are statements of two eye witnesses which show that Appellant had in fact never participated in the actual assault. He also drew attention of the Court to the statement of Heena who claimed that Appellant as well as co-accused caused assault on deceased but she

states about Appellant giving blow with plastic pipe without referring to part of body on which assault is caused. It is further submitted that in any case there is no motive or intention of the Appellant to commit murder of the deceased.

4. Learned Counsel for informant has supported the Appellant and in fact an affidavit is filed before this Court recording no objection for grant of regular bail. Learned appointed Counsel however drew attention of Court to the relevant facts of the case.

5. Learned APP opposed the Appeal essentially relying upon the statement of Heena. It is his contention that since this witness has categorically stated about the Appellant also being involved in actual assault to the deceased, no case is made out for bail. He further submits that at this stage injuries caused on the person of deceased cannot be specifically attributed to any one of the accused and they collectively owe responsibility thereof. It is his submission that having regard to the nature of allegations, Appeal deserves to be rejected.

6. No doubt, it is a case of offence punishable under Section 302 of IPC, however that itself cannot become a ground for rejection of bail, if involvement of Appellant is not seen *prima facie* in the offence. Perusal of the statements of witnesses indicate that the Appellant is the owner of the hotel and had engaged services of deceased as well as witness Heena for working therein. Further statements of witnesses indicate that the incident in question in all probability had occurred after the workers working in the said hotel consumed liquor. There are statements of Dilip and Omkar who candidly state about there being no involvement of the Appellant in causing of the assault and in fact they claim that the Appellant had removed the wooden stick as well as pipe from the co-accused and threw them. This conduct of Appellant runs contrary to intention to kill deceased. As against this, though there is statement of Heena who claims that the Appellant had also participated in the assault however, her statement also *prima facie* indicates that assault was caused essentially by the co-accused.

7. Apparently from record it is clear that the

deceased did not die on the spot i.e., in the hotel premises. The dead body was found from the well. There is nothing on record to indicate that the present Appellant is the one who had dragged the deceased while he was in the injured condition out of the said premises. *Prima facie*, having regard to the facts of the case, it is a fit case to enlarge Appellant on bail. No criminal history is reported against Appellant. He has roots in the society and hence not likely to abscond. Since Ms. Harsha Lomte, learned Counsel, is appointed for informant by this Court, learned Counsel for the Appellant volunteers to pay fees to her. Hence, Appellant to pay Rs. 10,000/- (Rupees Ten Thousand Only) to appointed Counsel.

8. In view of above, Appeal stands allowed.
Hence, the order:

O R D E R

- (i) The Appellant – Akshay Hanmant Katore in connection with Crime No. 150 of 2023 registered with Vashi Police Station, Dist. Osmanabad for the offences punishable under Sections 302, 201 read with Section 34 of Indian Penal Code and Section 3(2)(va) of the of the Scheduled Castes and Scheduled Tribes Act be released on bail on furnishing PB and SB of Rs. 25,000 (Rupees Fifteen Thousand

Only) with one solvent surety in the like amount.

- (ii) He shall attend the concerned police station as and when required.
- (iii) He shall not contact the witnesses directly or indirectly.
- (iv) He shall not interfere with the evidence in any manner whatsoever.
- (v) Bail before trial Court.

(R. M. JOSHI, J.)

Malani