

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.848 OF 2023**

Sadhana Navnath Navale .. Appellant
Versus
The State of Maharashtra and anr .. Respondents

**WITH
CRIMINAL APPEAL NO.850 OF 2023**

Mahendra Ganpat Atole .. Appellant
Versus
The State of Maharashtra and anr .. Respondents

Mr.Prashant Hagare, for the appellant in both appeals.
Mr.Ghanasham Jadhav, for respondent no.2.
Mr.S.R. Agarkar, APP for the State.
Mr.Ganesh Pravin Ingale, SDPO, Baramati.

**CORAM: BHARATI DANGRE, J.
DATED : 1st NOVEMBER, 2023**

P.C:-

1 The two appellants being arraigned as accused no.3 (Mahendra Atole) and accused no. 5 (Sadhana Navnath Navle) face charge under Section 302, 201, 504, 506 r/w 34 of IPC and Section 3(1)(r)(s), 3(2)(va)(v), and Section 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocity) Act, 1989, (for short 'Act of 1989')

 Since the application preferred by them securing their release on bail in Special Case No. 258 of 2022 is rejected, they have filed two distinct Appeals under Section 14-A of the

Act of 1989, being numbered as Criminal Appeal No. 850 of 2023 and Criminal Appeal No. 848 of 2023.

2 I have heard the learned counsel for the appellants, the learned counsel for the respondent no.2/complainant and learned APP for the State.

The investigating machinery was set into motion when one Sachin Pakhare, brother of Vikas Pakhare lodged a complaint informing the police machinery, that his brother was a driver on Eicher Tempo, which was owned by the family and the tempo was given on contract to Hindustan Company and he used to collect the goods from Hindustan Feeds Ltd Company at Baramati and transport it to Mangalvedha.

On 6/6/2022, he left his house in usual course and was in contact with the family. On 10/6/2022 at around 8:00 p.m he made a phone call informing his brother that members of Navle family were suspecting that he was carrying an affair with Sadhana Navle, the wife of Navnath Navle and he mentioned about his brother Sachin Navle, his friend Mahendra, one Dada Hagare threatening him and he also informed that he was abused by referring to his caste and was threatened that he shall be eliminated.

His brother feared for him and when asked to return home, he informed that he was in the Company and would return tomorrow, after delivery of the goods. On 11/06/2022 his phone was not reachable and on 12/06/2022 his body was found in the bed of river Nira near Kurval-Kurbavi Bridge and it was apparent that he was drowned, as his hands and legs were tied

and a cement pole was affixed to his stomach.

3 It is on the suspicion expressed by the complainant that the accused persons are arrested.

On completion of investigation, the charge-sheet is filed against 5 accused persons and while making the submission in favour of the appellants, the learned counsel would rely upon an order passed in case of co-accused Dada Hagare, whose name was taken by the complainant along with the other co-accused, as one of the person, who had threatened him on the night of 10/06/2022.

4 I have perused the order passed in the case of co-accused, when the Court arrived at the conclusion that the prosecution case is premised on circumstantial evidence and there is no clinching evidence to pinpoint the guilt of Dada Hagare, the accused no.4, and therefore, he was directed to be released on bail.

5 When the learned APP as well as the counsel for the respondent no.2 is asked to point out the material in the charge-sheet, which could establish the chain of circumstances leading to the accused persons, my attention is invited to the statement of the complainant, as also to the statement of one Raju Dattatray Waghmare, another Tempo driver, who shared close friendly relationship with Vikas Pakhare. Raju Waghmare in his statement recorded on 15/06/2022, stated that few days back, the deceased Vikas had told him that he had received threats from Sachin Navle and his friend and he advised him to disclose this fact to his family members.

6 The incriminating circumstance against Mahendra on which the prosecution rely upon is the discovery of the Eicher Tempo at his instance under the discovery panchnama drawn on 17/07/2022, and the recovery of keys from his house.

It is the case of the prosecution that the accused no.5 Sadhana made a phone call to the deceased and called him at her house and thereafter he was kidnapped by the co-accused and was taken in a Omni Car, when he was murdered and his body was thrown into the river, and thereafter the Eicher Tempo was driven by accused no.4 and thereafter by accused no.3/the present appellant Mahendra and it was concealed at a place and it is Mahendra himself, who led the Investigating Agency to the said tempo, which was seized.

This circumstance must necessarily form one of the circumstance in the chain of circumstance and there must be some evidence to show that the deceased travelled in the Eicher Tempo to the accused no.5's house, where other co-accused persons were present and then he was taken in a vehicle and done to death, and in order to conceal the tempo, it was driven from that spot and reached the place from where it was discovered at the instance of Mahendra.

However, when repeatedly asked, whether there is any evidence to that effect compiled in the charge-sheet, Mr. Agarkar, the APP is unable to show any material, though he would invite my attention to statement of one Shashikant Chagan Pisal, who was working in Hindustan Feeds Baramati.

In his statement recorded on 12/10/2022, he has only disclosed that on 10/6/2022, while Vikas, the deceased was in his company, he was informed that a marketing order is received and he should transport the same, but he had refused, by saying that he has received a call from relative and he will have dinner and come back and he left in his Eisher Tempo Mh-11-AL-7155.

As per the prosecution itself the accused no.5 Sadhana made a phone call to him, which is the last call received on his mobile at around 22:29 hours and thereafter his phone was not reachable as per the complainant.

7 There are apparent loopholes in the case of the prosecution, though undisputedly it is open for it to establish the chain of circumstance during the trial and once this chain is established, pointing the guilt of the accused persons and at no other persons than the accused, then definitely they would deserve conviction under Section 302, for doing Vikas Pakhare to death.

However, unfortunately this do not appear to be so from the charge-sheet, which is filed by the prosecution.

8 As far as accused no.5 Sadhana is concerned, except that she had made the last call to the deceased, she is not connected in the chain of circumstance and unless and until the evidence against her form a part to complete chain of circumstance, it is only the suspicion, which appear to be the basis of her arrest.

In any case the arrest of the appellants is for more than a year and now the investigation is complete and the material by the prosecution is compiled in the charge-sheet and even a supplementary charge-sheet has been filed, and hence detention of the two appellants become unnecessary.

9 As far as the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are concerned, though the deceased belong to Scheduled Caste, as far as the offence under Sections 3(1)(r) and (s) are concerned, the reference is only to be found in the version of the complainant, who has narrated the utterances which were informed to him by his brother. It however, do not attribute as to who was the author for the utterances, which insulted him on the ground of caste.

There is no cogent material to connect these two appellants to the offences under the Act of 1989 and as such *prima facie* since the offence under the said act is not made out, the bar under Section 18 shall not come into play and since I have formed an opinion that the prosecution at this stage has compiled the material in the charge-sheet and their further incarceration is not necessary, they deserve their release on bail.

: ORDER :

- (a) Appeals are allowed.
- (b) The impugned order dated 19/10/2022 passed below Exh.8 in Sessions Case No.258/2022, by the Additional District and Sessions Judge, Baramati, is quashed and set aside.

(c) Appellants - Sadhana Navnath Navale, and Mahendra Ganpat Atole shall be released on bail in Special Case No. 258 of 2022 arising out of C.R.No. 285 of 2022 registered with Walchandnagar Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- each with one or two sureties in the like amount.

(d) The appellants shall mark their attendance on first Monday of every month between 10:00 a.m to 12:00 noon to the concerned Police Station till framing of charge.

(e) The appellants shall provide their current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.

(f) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The appellants shall not tamper with evidence.

(SMT. BHARATI DANGRE, J.)