

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 3 OF 2023

Santosh s/o Sevaram Rathod, Aged
 about 33 years, Occupation :
 Agriculturist, R/o Devgaon, Tq. Arni,
 District Yavatmal.

(Presently at Distt. Prison Yavatmal.)

... APPELLANT

VERSUS

1. State of Maharashtra, through Police
 Station Officer, P.S. Arni, District
 Yavatmal.
2. Mrs. Lanka w/o Purushottam Dhoke,
 Aged about 20 years, Occupation :
 Agriculturist, R/o Devgaon, Tq. Arni,
 District Yavatmal.

... RESPONDENTS

Shri R.M. Daga, Advocate for the appellant.
 Mrs. Deshmukh, A.PP for respondent no. 1.
 Shri A.S. Band, Advocate (appointed) for respondent no. 2.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 20.01.2023.

ORAL JUDGMENT : (Per : Vinay Joshi, J.)

By consent of both learned Counsel, the appeal is taken up

for final disposal.

2. This is an appeal in terms of Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 challenging the order of rejection of regular bail dated 05.12.2022 in Sessions Trial No.7 of 2022. The appellant (accused) was involved in the offence punishable under Sections 302, 506 read with Section 34 of the Indian Penal Code, Sections 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 (for short 'the SC and ST Act'). The appellant has applied for regular bail before the Trial Court however it has been rejected. Since the provision of SC and ST Act have been invoked, that is why this is a statutory appeal.

3. Besides usual grounds, the appellant has claimed bail primely on the ground of parity as the co-accused namely Manoj Rathod havig similar role has been released by the Supreme Court on regular bail vide order dated 11.10.2022 in Special Leave to Appeal (Crl.) No.6852 of 2022. The learned A.P.P. appearing for the State as well as learned Counsel appearing for the respondent no.2/informant, resisted bail by stating that the appellant is the main accused at whose instance death was caused. It is also submitted that not only all of them

assaulted but thrown the dead body into the Well to hush up the matter. Considering the gravity, the appeal is opposed.

4. Deceased Purushottam Jadhav left his house on 12.09.2021 with his four companions including two accused and two others (turned as witnesses) for a party. Since he did not return to the house, the wife of the deceased has lodged a missing report about Purushottam on 13.09.2021. On the following day, i.e. on 14.09.2021, dead body of Purushottam was found in the Well of one Gajanan. On that basis, the Police initiated AD inquiry and recorded various statements. After gap of 40 days, the Police have zero down on the appellant and co-accused Manoj Rathod for which the Police have filed First Information Report on 28.10.2021. Since the First Information Report was based on the information of two eye-witnesses, with assistance of both sides we have gone through their statements.

5. By and large, both witnesses have stated that all of them went to the field of the appellant Santosh Rathod for a fish party. One of the witness Santosh Pardhi stated that while he along with another witness Rameshwar Rathod were away for little while, they heard shouts. They came back and saw that both accused assaulted Purushottam by means of stick and thrown him into the nearby Well.

Another witness Rameshwar stated that co-accused Manoj assaulted on which appellant Santosh Rathod and Manoj thrown injured Purushottam in nearby Well.

6. Considering the long delay of 45 days in lodging First Information Report, the investigation is complete, the Supreme Court has released co-accused Manoj Rathod on regular bail. We see no reason to carve out any exception as the Rule of parity would squarely apply having similar role to both of them. Moreover, one of the witness has not alleged against the appellant about the assault. In the circumstances, it is a fit case to release the appellant on bail primely on the ground of parity. In view of that, we passed the following order :

- (a) The appeals is allowed.
- (b) The impugned order dated 05.12.2022 passed by the Additional Sessions Judge, Darwha District Yavatmal in Sessions Trial No. 7 of 2022, is hereby quashed and set aside.
- (c) The appellant/accused Santosh s/o Sevaram Rathod in Crime No.901 of 2021 registered with Arni Police Station, District Yavatmal for the offence punishable under Sections 302, 506 read with Section 34 of the Indian Penal Code, Sections 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 shall be released on bail on his furnishing P.R. bond of Rs.50,000/- with one solvent

surety in the like amount.

- (d) The appellant shall attend the concerned Police Station on first Monday of every month in between 10.00 am to 12.00 noon till conclusion of trial.
- (e) The appellant/accused shall not enter within the village of Deogaon for a period of three months from today except the day of attendance.
- (f) The Applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (g) Breach of either of condition would give rise to the prosecution to move this Court for cancellation of bail.

Fees of appointed learned Counsel be paid as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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