

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

CRIMINAL APPEAL NO. 54 OF 2023

Amol s/o Sukhdev Ukey
Age : 29 years, Occu.: Laborer,
R/o. Kotmi, Tq. Chikhaldara,
Dist. Amravati.

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... Appellant

Versus

1. State of Maharashtra,
Through P.S.O. Chikhaldara,
Tq. Chikhaldara, Dist. Amravati.
2. Gondu s/o Ramsu Maraskolhe,
Age: 50 years, R/o. Kotmi,
Tq. Chikhaldara, Dist. Amravati.

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.. Respondents

Mr. D.S. Khushalani, Advocate for appellant.

Mr. V.A. Thakare, APP for respondent No.1.

Mrs. S.P. Dhotre, Advocate (appointed) for respondent No.2.

CORAM : VINAY JOSHI, AND
BHARAT P. DESHPANDE, JJ.

DATED : 11.04.2023.

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

. Heard.

(2) **Admit.** Heard finally by the consent of the learned
counsel for the respective parties.

(3) This is an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, raising a challenge to the order of rejection of regular bail in Crime No.192/2022, registered with Police Station Chikhaldhara, District – Amravati, relating to offences punishable under Section 302, 201, 376(D), 120(B) and read with Section 34 of the Indian Penal Code and Section 3(2)(v), 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(4) At the instance of report dated 12.09.2022 lodged by the Police Officer, a crime has been registered. Deceased girl aged 19 years went missing from her house on 17.08.2022. After two days i.e. 19.08.2022, her dead body was found floating in the Well water. The police have initially registered a murg report and conducted enquiry. During enquiry, the police have verified call details of the deceased. During enquiry, it was transpired that on 17.08.2022, deceased was in contact with three boys namely Amol (appellant), Jakir and Mukesh. The Sim Card of deceased was later on used by co-accused Jakir whilst appellant Amol and Mukesh have switched off their mobiles for few days. The police also came across that on 17.08.2022, the appellant and others were found roaming near the

field where a dead body was found. The body was in decomposed condition, hence, initially the cause of death was not revealed. It was found in post-mortem examination that hyoid bone was depressed. Medical opinion was sought on which the possibility of throttling the deceased was surfaced. Therefore, police have registered crime against three persons including appellant Amol for committing murder of deceased girl. The investigation was completed and charge-sheet has been filed. The appellant has applied to the trial Court for grant of regular bail, however, vide order dated 19.12.2022, the trial Court has declined to grant bail and therefore, this appeal.

(5) The learned counsel appearing for appellant would submit that there is no adequate material against the appellant so as to curtail his liberty. It is submitted that though deceased went missing on 17.08.2022 and her dead body was found on 19.08.2022, however, no grievance was put by family members of the deceased till lodging FIR. The applicant took us through the statement of father of deceased dated 21.08.2022 recorded in murg enquiry. In said statement the father of deceased stated that on 17.08.2022 his daughter went missing and within two days her dead body was found in the Well. He said that his daughter died due to falling in the Well

and he has no suspicion against anybody. Moreover, it is argued that there was love relationship in between deceased and co-accused Jakir. In past also Jakir has abducted deceased girl and due to intervention of Panchayat, Jakir has returned the girl to her parents. It is submitted that the statements of the witnesses no were discloses the specific role of the appellant.

(6) Our attention has been invited to the statement of father of deceased dated 25.08.2022. In said statement, he has expressed suspicion against all three accused. Precisely, he stated about the earlier incident wherein co-accused Jakir abducted his daughter and then, returned to him.

(7) Particularly, informant stated that on 17.08.2022, in the evening his mother namely Chaiti disclosed that in the afternoon she has seen two boys covered their faces took away the deceased girl. He further stated that co-accused Jakir has instigated his daughter, abducted her in which applicant and Mukesh assisted him. Contextually, learned counsel for the appellant took us through the statement of mother of informant namely Chaiti, who nowhere supports the said contention that she had seen two persons taking

away her grand daughter.

(8) The prosecution case is based on circumstantial evidence. The prosecution is relying on the statements of two witnesses namely Channu Uikey (Page 105), Anil Uikey (Page 107), who have seen appellant on the date of occurrence, while proceeding towards village Chirni by riding on motor cycle. These statements are in the nature that on the date of occurrence, the appellant was in the village and at the most was in the company of co-accused. The said material cannot be termed as a last seen together. Besides that the prosecution is relying on tower location and call detail record of the accused and deceased. We have examined the call details from which learned APP has only pointed that on the date of occurrence, there were two calls in between main accused Jakir and appellant. Apparently, there is no conversation between appellant and deceased girl. As regards to tower location is concerned, admittedly, the appellant is resident of the same village, therefore, it is a matter of interpretation in the trial.

(9) Pertinent to note that though the father of deceased in his statement dated 25.08.2022, has expressed suspicion against

Jakir and other, however, the crime was registered on 12.09.2022. It reveals from the police papers that co-accused Jakir has hatched a conspiracy, abducted deceased and with the aid of appellant and one Mukesh eliminated the deceased. The circumstances which are against the appellant are about his presence in the village on the date of occurrence and his two calls with principal accused Jakir. Besides that learned APP has not pointed any other circumstances against the appellant. Already investigation is complete and charge-sheet has been filed. The trial will take its own time for disposal in according to law. Having regard to the nature of material adduced against the appellant, we hold that a case of bail is made out. Hence, we pass the following order:

ORDER

- (i) Criminal appeal is allowed.
- (ii) The impugned order of rejection of bail dated 19.12.2022, passed in Criminal Bail Application No.557/2022, is hereby quashed and set aside.
- (iii) The appellant – Amol Sukhdev Ukey shall be released on bail in Crime No.192/2022, registered with Police Station Chikhaldhara, District – Amravati, relating to offences punishable under Section 302, 201, 376(D),

120(B) and Section 34 of the Indian Penal Code and Section 3(2)(v), 3(1)(w)(i)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on his furnishing PR. Bond of Rs.25,000/- with one or two sureties in the like amount.

(iv) The appellant shall not tamper the prosecution evidence in any manner.

(v) The appellant shall attend the concerned Police Station on first Monday of each month in between 10:00 a.m. to 12:00 noon for the period of one year from today.

(vi) The appellant shall provide his residential address and cell number to Investigating Officer.

(10) The appeal stands disposed of in the above terms.

(11) Fees of appointed counsel be paid as per rules.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

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