

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

CRIMINAL APPEAL NO. 87 OF 2023

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| 1. Geetabai Gyaniram Kirnapure (In Jail)
Aged about 46 years,
Occupation : Household,
R/o. Lohara, Tah. & District – Gondia. | } | ... Appellant |
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Versus

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| 1. State of Maharashtra,
Through Police Station Officer,
Police Station Davniwada, Tah. Tirod,
District – Gondia. | } | .. Respondents |
| 2. Sau. Sevangan Rajesh Kirsan,
Aged about 31 years, Occ.: Labourer,
R/o. Lohara, Tq. & District – Gondia. | } | |

Mr. D.V. Mahajan, Advocate for appellant.
 Mr. A.M. Kadukar, APP for respondent No.1.
 Mr. A.M. Haque, Advocate (appointed) for respondent No.2.

CORAM : VINAY JOSHI, AND
BHARAT P. DESHPANDE, JJ.
DATED : 20.03.2023.

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 bail dated 29.09.2022 (Exh.97) passed by the Additional Sessions Judge, Gondia. The appellant (accused) has been arrested on 06.07.2021 in Crime No.134/2021, by the concerned police for the offences punishable under Sections 302, 364, 324, 504, 506, 143, 144, 201 of the Indian Penal Code and Sections 3(2)(5), 3(1)(r)(s), 3(2)(5)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(4) The appellant is in judicial custody. The police have completed investigation and filed charge-sheet on 04.07.2021. The appellant Geetabai has claimed bail on usual grounds. Besides that the bail is also claimed on the ground of parity by pointing that co-accused, namely, Sandip s/o Maniram Kirnapure having similar role has been released by this Court in Criminal Appeal No.713/2022 vide order dated 18.01.2023. Moreover, it is submitted that the material collected against appellant is inadequate to curtail her liberty. It is pointed out that there is a considerable delay in lodging of First Information Report.

(5) The State, as well as, informant resisted for grant of bail. It has been submitted that the appellant's presence on the spot emerges from the FIR itself. Our attention has been invited to the statement of witnesses, who stated appellant's participation in actual incident. Moreover, it is argued that there are specific allegations that soon after the assault while mother of injured was about to give water to the injured, the appellant thrown away the bottle, which shows her culpability.

(6) At the instance of report dated 03.07.2021, lodged by the wife of deceased Raju, crime was registered. It is her contention that on 23.06.2021, initially, some of the co-accused inquired about her husband alleging that he has stolen motor cycle. In the afternoon, 12 named persons have cordoned her husband, including appellant and Sandip Kirnapure (parity claimed). It is stated that co-accused beat Raju by means of wooden-stick, chappal, causing him severe injuries. The statement of eye-witnesses are similar who conveyed that appellant, as well as Sandip Kirnapure were present in which both have manhandled Raju. Additional role is assigned to appellant that she prevented mother of injured to feed water.

(7) Beside merits the bail is claimed on the parity.

Undisputedly, role of appellant and Sandip Kirnapure regarding actual incident of beating, is one and the same. The only additional factor is that the appellant prevented to give water to injured Raju.

(8) We have gone through the injury report, which shows that there were several injuries and cause of death was, due to head injury. Though, there is little variation in the role, however, by and large the appellant is also facing the similar allegations about actual assault. Moreover, we have noted the fact that the appellant is a lady and therefore, there are less chances of tampering.

(9) Though, the offence is gruesome, however, it is not the allegation that the appellant has either used any weapon in the occurrence. Her role is restricted to giving slaps to deceased and not allowing to give him water. Having regard to nature of allegations levelled against appellant, we deem it appropriate to release her on bail as already investigation is complete. Moreover, on the ground of parity also she is entitled for bail.

(10) In view of above, the appellant is entitled for bail. Hence, we pass the following order:

ORDER

(i) Criminal appeal is allowed.

(ii) The impugned order of rejection of bail dated 29.09.2022, is hereby quashed and set aside. The appellant – Geetabai Gyaniram Kirnapure shall be released on bail in Crime No.134/2021, registered with Davniwada Police Station, Tah. Tirod, District – Gondia, for the offences punishable under Sections 302, 364, 324, 504, 506, 143, 144, 201 of the Indian Penal Code and Sections 3(2)(5), 3(1)(r)(s), 3(2)(5)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on her furnishing P.R. Bond of Rs.50,000/- with one solvent surety in the like amount.

(iii) The appellant shall not in any manner try to contact the prosecution witnesses till conclusion of trial.

(iv) 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 six months from today.

(v) Breach of either of condition would give rise to the prosecution to seek for cancellation of bail.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]