

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

CRIMINAL APPEAL NO. 233/2023

Khushal s/o Girwarlal Upgrade,
Aged about 22 years, Occ. Education,
R/o Nimba, Tah. Salekasa,
District Gondia
(Presently at District Prison at Bhandara) ... Appellant.

- Versus -

1. The State of Maharashtra
Through Police Station officer,
Police Station Salekasa,
District Gondia.
2. Prashant @ Karan s/o Charandas Karwade,
R/o Amgaon Khurd, Salekasa,
District Gondia ... Respondents

Mr. R.M. Daga, Advocate for the appellant.
Mr. A.M. Kadukar, APP for respondent no.1.
None for respondent no.2.

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

DATE : 02.05.2023.

ORAL JUDGMENT (Per VINAY JOSHI, J.)

Heard. Admit. Heard finally by consent of learned counsel for the respective parties. The informant (respondent no.2) is served but he chooses to remain absent. This is an appeal challenging the order of rejection of regular bail passed by the Trial Court below Exhibit 100 dated 20th March, 2023.

2. The appellant Khushal was arrested in Crime No.5/2022 dated 8.1.2022 registered with Salekasa Police Station, District Gondia for offences punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 3(2) (v), 3(2) (5-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with four others. The accusation is that deceased Sandip had relationship with the daughter of co-accused Girvarlal Uprade, which was not liked by the family of the girl. According to the prosecution case, on 7.1.2022 Sandip was assaulted by the accused with sticks and he succumbed to injuries suffered, particularly the injury on the kidney. The investigation is complete and chargesheet has been filed.

3. On account of false implication, inadequacy of evidence and parity, bail is claimed. It is pointed out that rest of the four accused are already released on bail. Though, other

accused are released on bail, however, the applicant primly claimed bail on merits. It is argued that as per the version of two eye witnesses role assigned to all accused is one and the same, and rest have been released on bail. The learned counsel would submit that the injuries sustained by deceased were on arms, legs and of simple nature. The cause of death is said to be haemorrhage shock and as a result of injuries to right kidney. It is argued that no dangerous weapon are used. Moreover, there is no recovery at the instance of applicant.

4. The learned APP resisted bail by contending that the offences are of serious nature . The applicant took prime role and the rule of parity would not apply.

5. There are two eye witnesses to the occurrence namely Narendra and Jayendra. Statements of both eye witnesses are identical. Both of them have stated that all named five assailants including the appellant have beated deceased by sticks, kicks and fists blows. We do not see any specific role to either of the assailants. The police have recorded dying declaration of deceased on the date of incident. In the said statement, deceased stated that the applicant Khushal, co-accused Girwarlal and one another co-accused initially beated him by means of sticks and then fourth accused joined them in beating by sticks. Our attention has been

invited to the oral dying declaration made by deceased to his mother. This time deceased discloses that all five accused assaulted him by means of sticks. Prima facie, we see that the role assigned to all accused is one and the same. Already all other accused are released on bail. Admittedly, there is no recovery at the instance of the appellant. No sharp aged weapon has been used nor injuries on vital part of the body. Investigation is complete and chargesheet is filed. Taking into consideration all aspects of the matter, we are inclined to use our discretion in granting bail to the appellant.

6. In view of above, the appeal is allowed.

7. The impugned order dated 20.3.20223 passed below Exhibit 100 by the District Judge-1 and Additional Sessions Judge, Gondia in Special (Atrocity) Case No.21/2022 is quashed and set aside.

8. The appellant shall be released on bail on such conditions as the learned Special Judge may deem fit to impose.

9. In addition to strict compliance with the condition which may be imposed by the learned Special Judge, it is made abundantly clear that if any attempt is made by the appellant to

contact, influence or threaten any witness, that ipso facto may give rise to the prosecution to seek for cancellation of bail.

10. The appeal is allowed in the aforestated terms.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

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