

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

CRIMINAL APPEAL NO. 381 OF 2023

Atul Ashok Shevatkar,
Aged about 34 years, Occu. - Labour,
R/o. Dharmadpura,
Tq. Chandur Bazar, Dist. Amravati.

.... **APPELLANT**

// **VERSUS** //

1) State of Maharashtra,
through P.S.O, Chandur Bazar,
Dist. Amravati.

2) Bharti Chandan Dithor,
R/o. Mochipuria, Taluka Chandur
Bazar, District Amravati.

.... **RESPONDENTS**

Mr. P.V. Navlani, Advocate for the appellant.

Mr. N.R. Rode, Additional Public Prosecutor for respondent No.1.

Ms. Kirti Deshpande, Advocate (appointed) for respondent No.2.

**CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.**

DATED : 13.07.2023

ORAL JUDGMENT : (Per Vinay Joshi, J.)

1. Heard finally by consent of the learned counsel appearing for the parties.

2. This is an appeal raising a challenge to the order of rejection of regular bail dated 09.03.2023 passed in Criminal Bail

Application No.113/2023 by which the trial Court has declined to exercise discretion in favour of appellant Atul Shevatkar in releasing him on bail. The said order is subject matter of challenge on the premise that the material collected by the police is inadequate to curtail the liberty of appellant. It is argued that besides mere presence and a pull to the collar of deceased, no more role is assigned to the appellant. The entire allegations of inflicting repeated knife blows are against the co-accused Sagar. Having regard to the peculiar allegations against the appellant, he seeks for bail.

3. Learned Additional Public Prosecutor Mr. Rao for respondent No.1/State as well as the learned counsel Ms. Kriti Deshpande (appointed) for the informant put resistance to grant bail. It is argued that as per the police papers, the appellant was present on the spot as well as he has participated in the occurrence. It is further argued that both brothers by hatching conspiracy and in furtherance of their common intention had done to death the deceased. Moreover, it is submitted that the appellant is nearby resident of the informant party and thus there is every likelihood of tampering if released on bail.

4. The appellant Atul, his real brother of Sagar, and one Rushikesh have been arrested by the concerned Police in Crime No.693/2022 for the offence punishable under Sections 302, 120-B, 504 read with Section 34 of the Indian Penal Code and Sections 3(2) (5), 3(2)(va) and 3(1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The police carried investigation and on completion filed final report in the Court of Judicial Magistrate.

5. At the instance of report lodged by widow of deceased dated 25.11.2022, the crime has been registered. It is the prosecution's case that two days prior to the occurrence, co-accused Rushikesh has expressed to the son of deceased namely Yash, that he along with Atul and Sagar have planed to commit murder of his father. No report was lodged about such threats. Then on 24.11.2022 at around 07.00 pm., in the evening, the deceased was about to close his shop, at that time, the co-accused Sagar, and Atul who were running a nearby shop arrived at the place and started to abuse the deceased. The appellant Atul pulled the deceased by catching his collar whilst co-accused Sagar took out the knife from his pocket and inflicted repeated blows to Chandan which proved to be fatal. The appellant Atul caught hold the hand of his assailant brother and took him away by riding on motorcycle.

6. Besides, statement of informant, who is an eye witness, the police have recorded statements of two eye witnesses who are minor sons of the deceased. It is consistent story that the role of appellant is of pulling deceased by holding his collar, whilst co-accused inflicted knife blows at his chest. It is apparent that role of appellant is of holding collar of the deceased. It is not the case that the appellant was holding any weapon or he caught hold the deceased. It is a matter of appreciation whether the appellant has assisted the assailant in the incident of killing. The entire allegations about assault by deadly weapons are against the co-accused Sagar. Though, it is canvassed that the accused had shared common intention with Sagar however, the same has to be proved in the trial. It reveals that two brothers started to quarrel with the neighbour in which one of the brother took out knife from his pocket and dealt blows. Whether the act of appellant is sufficient to construe common intention, is a matter of appreciation at the time of trial.

7. The police have seized weapon used in commission of crime from co-accused Sagar. The investigation is complete and charge-sheet has been filed. The appellant is in jail from 25.11.2022. Certainly, trial will take its own time for disposal in accordance with law. Undisputedly, the parties are resident of the same area. In view

of that imposition of stringent conditions are necessary to eliminate the possibility of tampering or pressurization. In view of that, we are inclined to use our judicial discretion in releasing the appellant on bail hence, the following order :-

- (i) The Appeal stands allowed.
- (ii) The impugned order dated 09.03.2023 passed by the Additional Sessions Judge, Achalpur in Criminal Bail Application No.113/2023 is hereby quashed and set aside.
- (iii) The appellant – Atul Ashok Shevatkar shall be released on bail in Crime No.693/2022 registered with Police Station Chandur Bazar, for the offence punishable under Sections 302, 120-B, 504 read with Section 34 of the Indian Penal Code and Sections 3(2)(5), 3(2)(va) and 3(1)(r) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, on his furnishing P.R. bond of Rs.50,000/- with one or two sureties of like amount.
- (iv) The appellant shall not enter within the territorial limits of the Chandur Bazar Taluka till completion of recording of the evidence of the informant and her two sons.

- (v) The appellant shall provide his intended residential address to the concerned Police within one week from his actual release from the jail along with his cell number.
- (vi) The appellant shall not tamper the prosecution evidence in any manner.
- (vii) Fees of the appointed counsel for the respondent No.2 – informant be quantified as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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