

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.
CRIMINAL APPEAL NO. 434/2023

1. Kundan Vinod Meshram,
Aged about 25 years, Occ. Labour,
R/o. At Durbha, Post-Dhanora,
Tq. Zari-Jamni, Dist. Yavatmal.

... **APPELLANT**

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Awadhutwadi,
Yavatmal.
2. Saurabh s/o. Totiram Kamble,
aged 26 years, Police Constable,
R/o. Police Quarters, Yavatmal

...**RESPONDENTS**

Mr.R.M. Daga, Advocate for appellant.
Mr. N.R. Rode, APP for respondent No.1.
Ms. Deepali Sapkal, Advocate (appointed) for respondent No. 2.
Ms. Anushri Pandey, Advocate (Intervener)

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

DATE : 27.07.2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Admit.**

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3. This appeal challenges the order of rejection of bail dated 15.04.2023 in Special Case No. 111/2022. The appellant was arrested in Crime No. 858/2022 registered with Police Station Awadhutwadi, Yavatmal for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SC and ST Act'). The appellant claims bail on the ground of innocence, false implication, inadequacy of material, lack of identification and completion of investigation.

4. The State as well as learned counsel appearing for the complainant and invervener resisted to grant bail by pointing towards seriousness of the offence. It is submitted that one of the witness has seen blood stains on the clothes of appellant/accused on his apprehension. Likewise, some of the witnesses have seen appellant in the company of co-accused at relevant time that too with arms. Moreover, it is submitted that in case of appellant releasing on bail, there is every likelihood of abscondance as he is residing near the State boarder.

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5. Deceased was a Police Constable residing in Police quarter. Informant too is a police personnel. It is informant's case that on 14.09.2022 at late midnight, he has seen Nishant Khandse (deceased) lying at road side in pool of blood with head injury. The informant stated that on the very day in the afternoon, he had been telephonically informed by co-accused Abhishek that he had a quarrel with deceased in the afternoon and therefore, he would kill the deceased. On the said basis, informant lodged report with the Police alleging against co-accused Abhishek.

6. Admittedly, there is no eye-witnesses to the occurrence. The case totally rests on circumstantial evidence. There is no recovery at the instance of appellant/accused. Though the Police recorded memorandum statement of appellant, however the place of throwing weapon allegedly shown by the appellant was already known to the Police. Several witnesses have stated that at the relevant time, they have seen co-accused Abhishek proceeding by riding on motorcycle with a pillion rider boy holding hockey stick and steel rod. However, none of the witnesses has stated that the appellant was pillion rider. Surprising to note that the Investigating

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Officer has not taken pains to conduct prior test identification parade, though on the day of First Information Report ('FIR) itself the appellant was arrested.

7. The Police have recorded statement of Police Constable Rathod wherein he stated that at the time of arrest of appellant he was present and had seen blood stains on his clothes. However, clothes seizure panchanama did not show blood stains on the clothes of appellant. True there may be position that blood cannot be seen by naked eyes, but it may emerge during chemical examination, however notably the statement of Police Constable Rathod has been recorded after one month which assumes significance.

8. The prosecution has pointed out one antecedent of the appellant i.e. offence registered under Section 324 of the Indian Penal Code prior to few days of the occurrence. True, antecedent is a relevant factor, but cannot be termed as a decisive in absence of convincing material in existing crime. In short, besides speculation, nothing has been shown against the appellant. In the circumstances, on the basis of such material, the liberty of individual cannot be curtailed. The investigation is complete and charge-sheet has been

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filed. In view of that, impugned order would not sustain in the eyes of law. Hence, following order:-

- (I) Appeal stands allowed.
- (II) We hereby quash and set aside the order dated 15.04.2023 passed by the Additional Sessions Judge, Yavatmal in Special Case No. 111/2022.
- (III) Appellant Kundan Vinod Meshram is released on bail on his furnishing P.R. Bond of Rs. 50,000/- with one or two sureties in the like amount.
- (IV) Appellant Kundan Vinod Meshram shall attend concerned Police Station on every first Monday of each month in between 10.00 a.m. to 01.00 p.m till conclusion of trial.
- (V) Appellant Kundan Vinod Meshram 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.
- (VI) Appellant Kundan Vinod Meshram shall provide his residential address and cell number to concerned Investigating Officer and shall not change his

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place of residence without prior intimation to the concerned Investigating Officer.

9. Appeal stands disposed of in above terms.

10. Fees be paid to the learned appointed counsel for respondent No. 2 as per Rules.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

Gohane