



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

CRIMINAL APPEAL NO. 501 OF 2023

Anwar Sheikh Mehboob Sheikh,
Aged about 26 years, Occu. -Labour,
R/o. Anand Nagar Ward,
District Wardha.

.... **APPELLANT**

// VERSUS //

1) State of Maharashtra,
Through Police Station Officer,
Police Station Wardha (City),
District Wardha.

2) Siddharth S/o Sheshrao Deotale,
Aged about 40 years,
R/o. Near Sathe Kirana Shop,
Anand Nagar, Wardha.

.... **RESPONDENTS**

Mr. R.M. Daga, Advocate for Appellant.
Ms. Deepa Charlewar, Additional Public Prosecutor for
Respondent No.1/State.
Ms. Seema Dhotre, Advocate (appointed) for Respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : DECEMBER 14, 2023

ORAL JUDGMENT :

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

2. By this appeal, the appellant has challenged the order passed by the Special Court in Special Case No.111/2021 below Exh.23 by which, application for grant of bail is rejected on 17.03.2023. The appellant is arrested on 29.07.2021 and since then, he is behind bar.

3. The accusation against the present appellant is that there was a love relationship between the accused No.1 i.e. present appellant and the daughter of accused No.3 – Vandeo Jawade. As per the allegation, the accused No.3 willing to perform the marriage of his daughter with one Kishan Deotade and present appellant was against this marriage and therefore, he in annoyance and by keeping grudge in his mind, has committed the murder of deceased Kishan. It is alleged that on 27.07.2021, elder daughter of the accused No.3 Vandeo called Kishan for bringing water-can, accordingly, Kishan came at their house along with the water-can and present appellant inquired with the accused No.3 Vandeo whether Kishan had come there and he informed that he came and left the place. It is alleged that present appellant in furtherance of the conspiracy hatched with the other co-accused, executed the plan and committed the murder of Kishan by taking him behind the power-house. The dead-body of the deceased was dumped in a flowing water. On the basis of the said report, police

have registered the crime against the present appellant and other co-accused.

4. Learned Counsel for the appellant Mr. Daga submitted that the entire case is based upon the circumstantial evidence except the statement of the daughter of accused No.3 Vandeo. There is no other material to connect the present appellant with the alleged offence. He further submitted that prosecution relied upon the recovery of one mobile phone and weapon of the offence at the instance of the present appellant, but nothing is on record to show that the said mobile phone belongs to the deceased, as during the recovery panchnama, the Investigating Officer has neither mentioned the make of the said mobile phone nor IMEI number therefore, this part of the evidence is also not sufficient to connect the present appellant. Even considering the statement of the daughter of the co-accused, it nowhere reveals that the co-accused has informed regarding the whereabouts of the deceased Kishan and thereafter present appellant has executed the plan. Thus, chain of the circumstances is not completed, the appellant is behind bar since the date of his arrest. Now, investigation is completed, there is no progress in the trial and considering the nature of evidence against the present appellant, the appellant be released on bail.

5. The said appeal is strongly opposed by the State on the ground that at the instance of the present appellant, weapon of the offence and mobile phone of the deceased was seized which is sufficient to show his involvement with the alleged offence and therefore, the appeal deserves to be rejected.

6. After hearing the learned Counsel for the appellant and after perusing the investigation papers, admittedly, the entire case is based on the circumstantial evidence. The only circumstances appearing against the present appellant are that the statement of the daughter of co-accused and the recovery at the instance of the present appellant. On perusal of the statement of the daughter of co-accused, it only discloses that her father has received a phone call and made inquiry about the Kishan and her father informed that Kishan had been to his house and now left. It nowhere shows that the co-accused has disclosed regarding whereabouts of the Kishan or shared the location of Kishan with the present appellant.

7. The learned trial Court had considered the material and held that there are circumstances to connect the present appellant and rejected the application. After going through the investigation papers, admittedly, in the recovery panchnama, neither the description nor the IMEI number of the said mobile phone is mentioned. The learned APP

pointed out the statement of witness namely Mayur Adwani, who is the mobile shop owner and Investigating Agency confirmed the fact that the deceased has purchased the said mobile phone from his shop. Even taking into considering this fact, it is difficult to accept that it is the same mobile which was seized by the police as Investigating Officer has neither mentioned the make of the mobile phone nor mentioned the IMEI number. If this material is kept aside, there is absolutely no material to show that the present appellant was knowing exact location of the deceased and in furtherance of the conspiracy hatched, he has eliminated the deceased.

8. Considering the entire material against the present appellant, it is apparent that learned Special Judge failed to consider the evidence collected by the prosecution against the appellant in the manner which he ought to have, in fact, there is absolutely no material to connect the present appellant at this stage. As far as the circumstances whether the mobile phone belongs to the deceased or not is to be established by the prosecution by collecting the necessary material, which is not reflected from the investigation papers.

9. As far as the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, it is nowhere case of the prosecution that the appellant has

committed the crime knowing that the deceased belonging to the Scheduled Castes. The Hon'ble Apex Court in the case of ***Khuman Singh Vs. State of Madhya Pradesh***, reported in ***(2020) 18 SCC 763*** has held that in a case of applicability of Section 3(2)(v) of the Atrocity Act, the deceased belonging to the Schedule Tribe would not be enough to inflict enhanced punishment. The prosecution has to establish that the offence has been committed only because the victim was belonging to Scheduled Castes or Scheduled Tribes, which is not even the case of the prosecution.

10. Considering the entire material on record, at this stage, the appellant has made out to release him on bail. Accordingly, I proceed to pass the following order :

- i) The Criminal Appeal is allowed.
- ii) The order rejecting the bail application below Exh.23, passed by the learned Special Judge, Wardha in Special Case No.111/2021 on 17.03.2023 is hereby quashed and set aside.
- iii) The appellant/accused – Anwar Sheikh Mehboob Sheikh is released on bail on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- iv) The appellant shall not induce, threat or pressurize any witnesses who are acquainted with the facts of the present crime.

- v) The appellant shall furnish his permanent address and contact details to the Investigating Officer.
- vi) The fees of the appointed Counsel for the respondent No.2 be quantified as per rules.

The Criminal Appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

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