



Judgment

161 apeal594.23

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

CRIMINAL APPEAL NO.594 OF 2023

Rushikesh s/o Ramdas Katole,
aged:21 years, occupation:labour,
r/o Chandur Bazar, district Amravati. **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
through PSO Chandur Bazar,
district Amravati.

2. Bharti Chandan Dithor,
r/o Mochipura,
taluka Chandur Bazar,
district Amravati. **Respondents.**

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Shri P.V.Navlani, Counsel for the Appellant.
Ms.Archana Murrey, Counsel Appointed for Respondent No.2.
Shri V.A.Thakare, Additional Public Prosecutor for Respondent
No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.
DATE : 22/12/2023

ORAL JUDGMENT

1. By this appeal, the appellant challenges order dated 14.8.2023 passed below Exhibit-1 by learned Ad-hoc Additional Sessions Judge-2, Achalpur in Criminal Bail Application No.370/2023 whereby learned Judge of the trial court declined to exercise discretion in favour of the appellant and the bail application has been rejected.

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2. Heard learned counsel Shri P.V.Navlani for the appellant; learned counsel Ms.Archana Murrey appointed for respondent No.2, and learned Additional Public Prosecutor Shri V.A.Thakare for the State.

3. Learned counsel for the appellant submits that learned Judge of the trial court has not considered that the appellant was not present at the time of incident in question. According to him, only material available against the appellant is that the appellant previously disclosed to son of deceased Chandan Dithor that, "send your father to some other place, otherwise he will kill him." It is submitted that besides the above material, no more role is assigned to the appellant. The entire allegations inflicting injuries are against co-accused Sagar Shewatkar. He submitted that as no specific role is attributed, the appellant be released on bail.

4. *Per contra*, learned Additional Public Prosecutor Shri V.A.Thakare for the State and learned counsel Ms.Archana Murrey appointed for respondent No.2 resist the appeal for grant of bail. They submit that co-accused obtained bail by misleading the court. It is further submitted

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that co-accused and the appellant hatched conspiracy and in furtherance of their common intention, they caused death of the deceased. They submit that as there are criminal antecedents against the appellant, if the appellant is released on bail, the possibility of he tampering with prosecution evidence cannot be ruled out and, therefore, they pray for rejection of the appeal.

5. Having heard learned counsel appearing for respective parties and perused record, it reveals that the appellant has been arrested in the crime in question. The allegation levelled against him is that prior to the incident, when sons of the deceased were playing on the ground on 22.11.2022, the appellant approached them and disclosed that, "send your father to some other place, otherwise Sagar Shewatkar and Atul Shewatkar would commit his murder." On the basis of the said allegation, the crime is registered against the appellant. The appellant's role is only to the extent that he asked sons of deceased that Sagar Shewatkar and Atul Shewatkar would commit murder of their father. Admittedly, the appellant was not present at the time of the incident. Allegation of inflicting repeated blows on the deceased are

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against Sagar. As per allegations, when the deceased was closing his shop, said co-accused Sagar came there and took out a knife from his pocket and gave repeated blows to the deceased which proved to be fatal.

6. Thus, the role of the assault is not attracted to the appellant.

7. Besides, statement of the informant, sons of the deceased, who are minor, narrated that the appellant expressed words that, "he along with Sagar and Atul would eliminate the deceased." The role of Sagar and Atul is shown that Atul has put the deceased by holding his collar and Sagar has given blows on his chest. Is not the case that the appellant was present at the spot or played any vital role in eliminating the deceased. It is a matter of appreciation and evidence, whether the appellant is involved in the conspiracy.

8. Considering the role of the appellant; considering the fact that person Atul Shewatkar, who was present and participated in the actual incident, who is released on bail by this court, the role of the appellant is minor.

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9. According to learned counsel for the appellant, investigation into the crime in question is completed and chargesheet is filed. Insofar as criminal antecedents against the appellant are concerned, he is already acquitted from offence in which he was prosecuted.

10. Considering the role of the appellant, which is minor in nature and there are criminal antecedents against him, liberty of the appellant cannot be curtailed. I am inclined to use discretion in favour of the appellant by releasing him on bail, as per order below:

ORDER

(1) The criminal appeal is **allowed**.

(2) The order dated 14.8.2023 passed below Exhibit-1 by learned Ad-hoc Additional Sessions Judge-2, Achalpur in Criminal Bail Application No.370/2023 is hereby quashed and set aside.

(3) Appellant - Rushikesh s/o Ramdas Katole, in connection with Crime No.693/2022 registered with Chandurbazar Police Station, district Amravati for offences punishable under

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Sections 302, 120B, and 504 read with Section 34 of the Indian Penal Code and under Sections 3(2), 3(2)(va), and 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, be released on bail on his executing a P.R.Bond in the sum of Rs.50,000/- with one or two solvent surety of the like amount.

(4) The appellant shall not enter into the jurisdiction of Chandurbazar, till completion of recording of witnesses in the crime in question.

(5) The appellant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(6) The appellant shall furnish his cell phone number(s) and address with the address proof. Additionally, he shall furnish names of his two relatives and their addresses with proofs.

(7) Needless to mention that the observations made in this order are purely *prima facie* for deciding the present appeal only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

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(8) Fees of learned counsel Ms.Archana Murrey appointed for Respondent No.2 are quantified and the same be paid to him as per Rule.

With this, the appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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