

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

CRIMINAL APPEAL NO. 713/2022

Sandip S/o. Maniram Kirnapure,
aged about 28 years, Occ. Agri,
R/o. Lohara, Tal. & Dist. Gondia.

APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Dawaniwada,
Dist. Gondia.
2. Sau. Sevangana wd/o. Rajesh Kirsan,
Age 30 years, Occ. Household,
R/o. Lohara, Tal. & Dist. Gondia.

RESPONDENT

Mr. N. R. Tekade, Advocate for appellant.

Mrs. M. Deshmukh, Additional Public Prosecutor for respondent
No.1/State.

Mrs. S. Giratkar, Advocate for respondent No. 2. (appointed)

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

DATE OF JUDGMENT : **18.01.2023**

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Heard.

2. This is an appeal under Section 14-A of the Scheduled
Castes and Scheduled Tribes (Prevention of Atrocities) Act ('Atrocities

Act') raising a challenge to the order of rejection of bail dated 29.09.2022 (Exh. 99) passed by the Court of Additional Sessions Judge, Gondia. The appellant (accused) has been arrested on 06.07.2021 in Crime No. 134/2021 by the Police, Dawaniwada Police Station, District Gondia for the offence punishable under Sections 364, 324, 504, 506, 143, 144 of the Indian Penal Code and Sections 3(2)(5), 3(1)(r), 3(1)(s), 3(2) of the Atrocities Act. The appellant is in judicial custody. The Police have completed the investigation and filed charge-sheet on 04.07.2021.

3. The accused Sandip Kirnapure has claimed bail on usual grounds. Besides that, it has been canvassed that the role assigned to accused is of mere presence and nothing more. According to the appellant/accused, the material collected against him is totally inadequate to curtail his liberty. It is pointed that there is considerable delay in lodging of First Information Report ('FIR'). It has been brought to the notice that this Court has released one of the co-accused namely Gopichand Katangkar on bail in Criminal Appeal No. 514/2021 vide order dated 26.07.2022.

4. The State as well as informant resisted for release of accused on bail. It has been submitted that the applicant's presence on the spot has been disclosed in FIR itself. Moreover, our attention has been invited to the statement of witnesses namely Kewal to contend that

it discloses active participation of accused in the incident. The learned APP would submit that since the provisions of Section 143 of the Indian Penal Code has been invoked, the accused is also responsible for the acts. There is no dispute about the said legal proposition, however, it is a matter of trial to establish common object.

5. At the instance of report dated 03.07.2021 lodged by the wife of deceased Raju, crime has been registered. It is her contention that on 23.06.2021, initially some of the co-accused met and inquired about her husband Raju (deceased) by saying that Raju has stolen their motor-cycle. She stated that on that day around 01.00 p.m. she heard shouts on the road, therefore she along with her mother-in-law rushed to the place. They saw that deceased Raju was lying on the road whilst total 12 named persons have cordoned him. She has also stated the name of accused Sandip as one amongst them. It is her contention that the co-accused beat Raju by means of wooden stick, chappal and caused him severe injury. Thereafter, some other co-accused put deceased into four wheeler and left the place.

6. On inquiry with the Police, informant learnt that co-accused came to the Police Station with deceased Raju. They informed to the Police that Raju was in drunken position and sustained head injury, on which Police directed them to extend medical aid. She has also stated that on the same day in the evening one co-accused Kamlesh came to

their house and asked some clothes for deceased, which Kamlesh handed over to applicant/Sandip. Since deceased Raju was untraceable, informant went to Police Station and lodged report. Initially, the Police registered offence for abduction and under other provisions of Indian Penal Code and Atrocities Act.

7. On 06.07.2021, one of the co-accused namely Rahul was arrested. In pursuance of his disclosure statement under Section 27 of the Indian Evidence Act, the Police came to know about the place where dead body of Raju was buried. On the same day, the body was exhumed and autopsy was done. There were in all 8 contused wounds and cause of death is as “head injury”.

8. So far as the role of applicant of Sandip is concerned, the informant has assigned role of mere presence at the time of occurrence. Though she stated that accused Sandip accompanied in the after noon with one Kamlesh, however i.e. separate incident requires evidence to link it with the occurrence. We have gone through the statement of another eye-witness i.e. mother of deceased namely Bhagwatabai. She has equally stated that at the relevant time in all 12 persons were present including accused Sandip. She has also specifically stated the names of co-accused who dealt with stick blows to the deceased.

9. The prosecution has stated that one can find the direct role of accused Sandip in the statement of witness Kewal. On perusal of his

statement, it reveals that several persons were present on the spot, in which the accused Sandip also beat by fist blows and kicks. The said statement has been recorded on 16.07.2021 by the Investigating Officer. Besides that the prosecution is unable to point out any other material to show specific overt-act of the applicant - Sandip.

10. The learned counsel appearing for the applicant stated that one of the co-accused Gopichand was released on bail on the ground that his name was not mentioned in the FIR and the statement barely shows his presence on the spot without specific role. True, the name of Sandip emerges from the FIR itself, however it only conveys about his presence on the spot. We have gone through other statement of eye-witnesses who have assigned the role of actual assault to co-accused and not to applicant-Sandip. During investigation clothes of accused Sandip have been seized on 09.07.2021, which does not disclose any prima facie nexus with the crime.

11. Though offence is gruesome, however in order to curtail the liberty, there should be adequate material. Besides presence of the applicant, there is nothing against him. Already investigation is complete and charge-sheet has been filed. Accused Sandip is in Jail from 06.07.2021. Having regard to the nature of material and his role, we deem it appropriate to release appellant - Sandip on bail on certain terms.

12. In view of above, the applicant has made out a case for grant of bail. By allowing appeal, we pass the following order:-

I. Impugned order of rejection of bail dated 29.09.2022 is hereby quashed and set aside.

II. The appellant – Sandip S/o. Maniram Kirnapure shall be released on bail on his furnishing P.R. Bond of Rs. 50,000/- with one solvent surety in the like amount.

III. The appellant shall not enter in the jurisdiction of Dawniwada Police Station during the pendency of the Trial except attendance.

IV. The appellant shall not in any manner try to contact the prosecution witnesses till conclusion of trial.

V. The appellant shall attend concerned Police Station on first Monday of each month in between 10.00 a.m. to 12.00 noon for the period of six months from today.

VI. Breach of either of condition would give rise to the prosecution to seek for cancellation of bail.

13. Fees be paid to the learned counsel appointed for respondent No.2 as per rule.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)