

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 873 OF 2022.

Ramkrushna @ Rajju s/o Manik
Shendre, Aged about 44 years,
Occupation - Labour, Resident
of Indira Gandhi Ward, Kumbhar Toli,
Bhandara, Tahsil and District Bhandara. ... **APPELLANT.**

VERSUS

1.The State of Maharashtra,
Through Police Station Officer,
Police Station, Bhandara,
Bhandara.

2.Karan s/o Ramesh Barapatre,
Aged about 18 years, resident
in house of Hemant Ramteke,
resident of Dr.Ambedkar Ward,
Near Nisha School, Bhandara. ... **RESPONDENTS.**

Mr. V.D. Muley, Advocate for the Appellant.
Mr.S.S. Doifode, Addl.P.P. for Respondent No.1/State.
Ms.A.D. Kolhe, Advocate (Appointed) for Respondent No.2.

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

DATE : FEBRUARY 06, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Considering the controversy involved in the matter, and by consent of the learned Counsel appearing for the respective parties, Criminal Appeal is taken up for final disposal at the stage of admission.

Admit.

2. The appellant/accused Ramkrushna @ Rajju Manik Shendre raises a challenge to the order of rejection of bail dated 23.11.2022 passed by the Additional Sessions Judge, Bhandara in Special Atrocities Criminal Case No.22/2022, which arise out of Crime No.440/2021 registered with Bhandara Police Station for the offence punishable under Sections 302, 324, 341 read with Section 34 of the Indian Penal Code and Sections 3[2][v], 3[2][va] and 3[1][s] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, (hereinafter referred to as “**the Atrocities Act**” for

Rgd.

short). Since the provisions of the Atrocities Act have been invoked, this is an appeal in terms of Section 14-A of the Atrocities Act.

3. The appellant/accused has claimed bail mainly on the ground of parity with co-accused namely Rajat @ Chintu Sonekar, who has been released by this Court in Criminal Appeal No.445/2022 vide judgment and order dated 14.10.2022. Moreover, it has been argued that besides mere presence, there is no material against the appellant/accused.

4. It is the prosecution case in brief that at the relevant time the informant Karan was proceeding along with the deceased Mahindro Patil by riding on a two wheeler. In all 4 persons including Rajat [released on bail], and appellant caused two wheeler to fall and then co-accused Umesh took out a knife and dealt a blow to Mahindro, which ultimately resulted into his death. Another co-accused Purshottam Mahakalkar [released on bail], has dealt a stick blow at the left leg of the informant. It has been submitted that the assault by means of knife was by Umesh to the deceased and co-

accused Pusuhottam dealt stick blow at the leg of the informant. The first information report does not ascribe any role to the appellant, nor the weapon has been seized at his instance. It is submitted that though the ground of parity has been canvassed before the trial Court, it was not considered in its proper perspective, resulting into rejection of bail.

5. The State has resisted the bail by contending that there are consistent statement of eye witnesses about complicity of the appellant/accused. Since the accused was present on the spot, with the aid of Section 34 of the Indian Penal Code he is equally responsible for the act committed by the co-accused. Moreover, it has been submitted that the rule of parity would not apply as the appellant is a history sheeter and there are several criminal antecedents. It is not in dispute that the co-accused Rajat @ Chintu has been released on bail by this Court. While releasing Rajat on bail, it has been considered that the role assigned to Rajat was like that of appellant/accused of mere presence only. The learned A.P.P. conceded that the order of bail passed by this Court about co-

accused Rajat, has not been challenged by the State.

There is supplementary statement of informant recorded on 05.01.2022, stating that the other accused also caught hold of deceased and beated him by fists blows and knife. However, the said aspect was already adequately dealt with by this Court. The first information report has been lodged by Karan on 13.12.2021, and his supplementary statement was recorded on 14.12.2021. In both statements, the informant Karan did not state about the subsequent occurrence about assault by all of them. The statements are consistent about the role of the co-accused Umesh assaulting by knife, and Mahakalkar giving stick blow at the leg of the informant. Though in the second supplementary statement of informant dated 05.01.2022, and in the statement of eye witnesses Nirmalabai, recorded on 05.01.2022 they have stated that after assault, again all 4 persons caught hold the deceased and beat him, however the said subsequent addition has first time come after 20 days.

6. Moreover, in the said statement also in a generalized manner it has been stated that all of them have assaulted. There is

no corroboration to the subsequent event as the medical report only speaks about one stab injury on the person of the deceased with two abrasions. The said aspect was adequately dealt with by this Court while releasing the co-accused Rajat on bail. Precisely the allegations leveled against Rajat and applicant Ramkrushna @ Rajju are same, about their presence and in subsequent alleged occurrence. Having regard to said aspect already Rajat has been released, the trial Court has not dealt with as to why the rule of parity would not apply as both Rajat and the appellant are sailing in the same boat.

7. The learned Counsel appointed for respondent no.2 as well as the learned A.P.P. are unable to distinguish the role of the appellant from the released accused. The only point canvassed by the learned appointed Counsel is about criminal antecedents of the appellant. In this regard, we have been taken through a crime chart of the appellant [page nos.190 to 193 of the appeal memo]. True in all 8 prior offence have been registered against the appellant. First three offences are registered prior to 10 years. Then in the year 2016, a crime was registered under Arms Act; In the year 2020

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under Narcotic Drugs and Psychotropic Substances Act, 1985 and for the offence of kidnapping and abducting. Besides that one prohibitory action was taken. The learned appointed Counsel by placing reliance on the decision of Supreme Court in case of **Deepak Yadav .vrs. State of Uttar Pradesh and another – [2022] 8 SCC 559**, would submit that in similar circumstances having regard to the criminal antecedents, bail was cancelled.

8. We have gone through the above decision wherein the Supreme Court has laid down principles governing grant of bail, as well as for cancellation of bail. Certainly those aspects have to be kept in mind while deciding this appeal. In said case, the High Court has released the applicant therein namely Harjeet Yadav on the ground of parity of co-accused Sushilkumar. While considering the Special Leave Petition for cancellation of bail, the Supreme Court has observed that the order of High Court suffers from vice of non-application of mind. In said case Harjeet Yadav, to whom parity was accorded, was infact the main accused who has fired bullet, therefore, on facts it has been held that the rule of parity would not

apply and while cancelling bail, the Supreme Court has considered his antecedents too. Pertinent to note that in paragraph no.39 of the said judgment, it has been observed that there cannot be a straitjacket formula which exists for courts to assess an application for grant or rejection of bail. Thus principally on the basis of facts of the case and on set parameters, the application for bail has to be decided.

9. We have already noted above and it is not disputed by other side that on facts the rule of parity applies to the appellant, the question remains is only of antecedents. Antecedents cannot be the sole criteria to decide entitlement for bail. Certainly, it can be one of the factor, but, shall not be the sole factor. In case at hand, the role assigned to the appellant prima facie appears to be of mere presence on the spot. Right from the first information report, it has been consistently stated that the co-accused Umesh has dealt knife blow and there was only one stab injury on the person of the deceased. In the light of role of the appellant, we have seen his antecedents. Undoubtedly there are two previous offences registered during last

two years, which relates to offence under NDPS Act, kidnapping and abducting. Considering his repeated involvement in different kind of offences, we deem it fit to impose stringent conditions so as to eliminate the threat of tampering. In view of above, the appellant Ramkrushna is entitled to bail on the ground of parity. Hence, the following order.

ORDER.

- (i) Criminal Appeal is allowed.
- (ii) The impugned order dated 23.11.2022 passed by the Additional Special Judge, Bhandara below Exh. 30 in Special Atrocities Criminal Case No.22/2022, is hereby quashed and set aside.
- (iii) The appellant – Ramkrushna @ Rajju Manik Shendre be released on bail in connection with Crime No.440/2021 registered with Police Station Bhandara, for the offence punishable under Section 302, 324, 341 read with Section 34 of the Indian Penal Code and Sections 3[2][v], 3[2][va] and 3[1][s] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on his executing P.R. bond in the sum of Rs.50,000/- with one

or two sureties in the like amount.

- (iv) The appellant 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.
- (v) The appellant shall not enter the territorial jurisdiction of entire Bhandara District till the conclusion of the trial, except for attending Court proceedings. The appellant shall furnish his intended address of residence along with cell number to the concerned investigating officer.
- (vi) Fees for the appointed Counsel for respondent no.2 be paid as per Rules.

JUDGE

JUDGE