

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

CRIMINAL APPEAL NO. 907/2022.

Suresh Kashiram Mapari,
Aged about 47 years,
Occupation – Agriculturist,
Resident of I.U.D.P. Colony,
Washim, Tq. And District
Washim.

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APPELLANT.

VERSUS

1. State of Maharashtra,
through P.S.O. Police Station,
Washim City, Washim.

2.Sub Divisional Police Officer,
Washim.

3.Sau. Lalita Pandit Wankhede,
Aged about 35 years, Occupation
Household, resident of Lahuji Nagar,
Washim, Taluq and District Washim.

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RESPONDENTS.

Mr.A.M. Ghare, Advocate for the Appellant.
Mr.M.J. Khan, A.P.P. for Respondent Nos. 1 and 2.
Mr.S.K. Wankhede, Advocate for Respondent No.3.

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

DATE : JANUARY 09, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

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

Admit.

2. Rejection of regular bail in Crime No.857/2022 registered with Police Station Washim City for the offence punishable under Sections 307, 120-B read with Section 34 of the Indian Penal Code and Section 3[2][va] of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the Atrocities Act” for short), gave rise to this appeal in terms of Section 14-A of the Atrocities Act. The appellant has applied for regular bail on account of innocence, inadequacy of incriminating material,

political rivalry and health ground. The trial Court declined to exercise the discretion in his favour resulting into rejection of bail.

3. At the instance of a report lodged by the eye witness to the occurrence, a crime came to be registered. It is the contention of the informant that on 10.11.2022 around 4.30 p.m., she along with two others, including the victim lady [injured] were proceeding from the area known as Patni Chowk of Washim City. While they were passing from the side of Rural Police Station, the victim was little bit ahead then the two. At that time, one unknown boy in the age group of 22-25 years abruptly came in the way and accosted the victim. He cause to fall the victim by giving push and then took out a knife from his pocket. The unknown assailant gave repeated knife blows at the stomach, waist and hands of the victim causing her bleeding injuries and fled away. Immediately the victim was shifted to the hospital, where she was medically treated. On the basis of said information regarding commission of a cognizable offence, the police have initially registered the aforesaid crime for the offence punishable under Section 307 of the Indian Penal Code, against the

unknown assailant.

4. During the course of investigation it was found that one of the arrested accused namely Atal was the unknown assailant. Few more arrested persons were found to have hatched the conspiracy with Atal to eliminate the victim lady. Statement of injured victim was recorded on three occasions. In her last statement recorded on 26.11.2022, she disclosed the name of the appellant as the main conspirator. The victim stated that the appellant/accused is an influential person of the vicinity. The appellant/accused is the District President of a political party and the victim also belongs to the said party. She had an association with the appellant since last 6 years. They had developed love relationship, however, from last one year, the appellant was avoiding her. It is her contention that the police have arrested co-accused Zuber, who was having close association with the appellant Suresh. The victim has stated that since the appellant was avoiding her, he has designed a plot to kill her, resulted into deadly assault. On the basis of said statement, the concerned police arrested the appellant on 26.11.2022 and since then he is in jail. The police have arrested total 5 to 6 persons in

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connection with the aforesaid crime.

5. The learned Counsel appearing for the appellant/accused would submit that the appellant has been falsely implicated in the case out of political rivalry. Though the police had recorded victims' statement on 12.11.2022 and 21.11.2022, however, she did not disclose about the complicity of the appellant and it is because at the instance of political vengeance, he has been roped belatedly on 26.11.2022. It is submitted that the police are relying on the statement of co-accused, which cannot be used against the appellant for his implication. Moreover, it is submitted that the victim lady is in the habit of making false complaint. In order to support said contention, copy of the judgment delivered in Special Atrocities Case No.59/2014 has been produced on record to contend that in like manner false allegations were leveled against the then accused about rape, however, said case resulted into acquittal. Moreover, the learned Counsel for the appellant took us through page no.9 of the appeal to contend that the victim is also an accused in Crime No.732/2022 registered for the offence punishable under Section 307 of the Indian Penal Code. Besides that it is argued that the

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investigation is practically complete. The victim has been discharged from the hospital, and thus, there is no necessity to keep the appellant behind bars.

6. Per contra, the learned A.P.P. as well as the learned Counsel appearing for the victim lady put strong resistance to this appeal. It is argued that the unknown assailant was hailing from Bihar State, who has no motive at all. It is argued that the appellant was having intimacy with one Zuber and Abdul Wajid, with whom he has conspired to kill the victim and to execute the plan brought the assailant from Bihar State. It is argued that the appellant has financed Rs.20 lakhs to execute the plan, and thus, he being the main conspirator, not entitled for bail. It is submitted that the appellant was scared that if the victim lady exposes their love relationship, then it would have adverse impact on his political carrier, and therefore, he has designed the plan to kill her. Moreover, it is submitted that the assault was gruesome in which the victim sustained multiple incise wounds, and thus, this is not a fit case for enlargement on bail. It is the last submission that yet investigation is not complete, as charge sheet has not been filed. The

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appellant being an influential person, there is every likelihood of tampering and therefore, the appeal is prayed to be dismissed.

7. The learned Counsel appearing for the appellant while criticizing the manner of investigation, has pointed out that the third statement of the victim dated 26.11.2022 was made viral on whatsapp, which is a matter of serious concern, as yet charge sheet has not been filed. Already the trial Court has taken note of the said fact and issued necessary directions. Moreover, he has pointed out that in the vital statement of victim dated 26.11.2022, there is mention that the statement was read over to the victim by her brother, but, we do not wish to delve on the said aspect in bail matter.

8. The incident occurred on 10.11.2022 around 4.30 p.m. on a public road. It is the prosecution case that an unknown assailant [lateron found to be Atal], has made a deadly assault on the victim lady. There are eye witnesses to the occurrence, however, the said material relates to actual assailant only. The police report has been lodged by one of the accompanying lady, however, she has only

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stated about the assault made by the unknown assailant. During the course of investigation police have arrested 5 to 6 persons on the charge of conspiracy.

9. In the above background, it is essential to go through the statements of the victim lady aged 39 years. Perusal of police paper indicates that the first statement of the victim was recorded by the police at Ozone Hospital, Akola on 12.11.2022. In the said statement she has narrated in detail about the assault made by the unknown person. In the later portion she expressed suspicion against two co-accused namely Nitin Kawarkhe and Bhagwan Wakudkar, as in the past they had threatened her. Admittedly in the said statement she has not expressed anything against the appellant. This was followed by her second statement recorded on 21.11.2022. This time, she added that earlier she met with a vehicular accident. She expressed that the said incident was not a mere accident, but, it might be a plot to kill her. She again stated that Nitin Kawarkhe in past asked her to disassociate with the appellant and for that reason, Nitin and Bhagwan had threatened her and therefore, they might have arranged the plot. Pertinent to note that second statement also

the victim lady has not uttered a single word against the appellant.

10. The police have recorded third statement of the victim on 26.11.2022, wherein for the first time the appellant was brought into picture. This time, she narrated about her love relationship with the appellant Suresh. It is her contention that the appellant was trying to avoid her and in order to get rid from the relationship, has conspired with others, resulting into the assault.

11. The victim first time alleged against the appellant, as the main conspirator in her third statement. Prima facie it reveals that on earlier two occasions, she never thought about the complicity of the appellant, however, after 15 days from the occurrence, she stated so, which needs consideration. Though police have recorded statement of co-accused stating about the involvement of the appellant, however, statement of co-accused have been recorded after their arrest, and therefore, prominently the question about its admissibility has surfaced. However, at this stage statements of co-accused without other material cannot be used for implicating the appellant.

12. Though the victim in her statement dated 21.11.2022 has expressed suspicion regarding her accident which took place on 23.04.2022, however, she never alleged anything against the appellant. Apparently, it was mere suspicion tried to be linked with the appellant at belated stage. No doubt, the case against the appellant is of hatching conspiracy. Needless to say that there cannot be a direct evidence on the point of conspiracy, but, inference has to be drawn from the emerging material.

13. The learned A.P.P. took us through the CDR to establish the link of appellant with co-accused. In this regard he attracted our attention to page no.171 of the police papers to indicate that there has been a telephonic conversation in between the accused and co-accused Zuber on 11.03.2022. Likewise, our attention has been drawn to a telephonic conversation between the appellant and co-accused Kawarkhe [page no.178], to show that they had telephonic talk twice on 15.11.2022. The said telephonic conversation, even if presumed to be true, on prima facie basis, it is insufficient to link with the crime which occurred on 10.11.2022.

14. On query, the learned A.P.P. would submit that the victim lady was discharged on 10.12.2022. It is not pointed that what part of investigation has remained, which clearly gives an indication that the investigation is practically complete. So far as holding of prior T.P. parade is concerned, it has no relevance with the appellant in view of the charge of conspiracy. As regards to the chances of tampering are concerned, suitable conditions would suffice the purpose. Having regard to the above circumstances, and nature of material collected against the appellant, we see no reason for further detention. In view of above, following order is passed.

ORDER

[i] Criminal Appeal is allowed and disposed of. The impugned judgment and order passed by the Sessions Judge, Washim in Misc. Criminal Appeal No.551/2022 dated 21.12.2022 is hereby quashed and set aside.

[ii] The appellant/accused - Suresh Kashiram Mapari, shall

be released on bail in connection with Crime No.857/2022 registered with the Washim Police Station for the offence punishable under Sections 307, 120-B read with Section 34 of the Indian Penal Code and Section 3[2][va] of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on his furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.

[iii] The appellant/accused shall not enter into the territorial jurisdiction of entire Washim District till the filing of the charge sheet or for a period of 90 days from today, which ever is earlier.

[iv] The appellant/accused 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 prosecution evidence.

[v] The appellant/accused shall provide his intended

residential address and cell number to concerned Investigating Officer during his stay out of Washim District.

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