



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 202 OF 2024

Gafur Mahetab Tamboli And AnotherAppellants

VERSUS

The State Of Maharashtra And AnotherRespondents

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Mr. Tukaram Maruti Venjane, Advocate for Appellants.

Mr. K.K. Naik, APP for Respondent No. 1-State.

Ms. Namita Thole, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th MARCH, 2024

ORDER :

1. By this appeal, appellants challenge the order passed by learned Additional Sessions Judge, Nilanga, Dist. Latur, in Criminal Bail Application No. 14/2024, thereby rejecting the application filed by appellants under section 439 of Cr.P.C.

2. FIR is lodged by respondent No. 2, brother of Atul Ture alleging that, Atul was doing typing business in front of registry office at Nilanga. His father Vasantrao Ture had dispute with Gafur Tamboli since year 2018 about non receipt of compensation of acquisition. However, no complaint to that effect was registered by them. On 23.09.2022 at about 10.30 pm, Satish Gobade came to his house and told that Atul has met

with an accident in *Lambota shivar* near the field of Sunil Pandharikar. Informant along with Kartik Shinde, Waghambar Ture, Ananda Ture went to the spot and saw that Atul was lying upside down and he had received head injury. Motorcycle used by his brother was lying below the bullock cart. Since there was too much bleeding from the head injury, they took him to the Civil Hospital, where the doctor declared him dead.

On 24.09.2022, at about 8.00 am, Sangram Bhopi from the same village told informant that Gafur Tamboli and Dilip Munjal both resident of *Lambota* came to his field at 11.00 pm on 23.09.2022 and disclosed him that there was accident between their motorcycle and Atul's motorcycle. Hence, informant claimed that appellants/accused have deliberately caused accident and killed Atul by hitting some hard object on his head.

3. Pursuant to registration of offence, appellants came to be arrested on 24.01.2024. They preferred Criminal Bail Application No. 14 of 2024, which is rejected by Sessions Court. Hence, the present appeal.

4. Heard learned advocate for appellants, learned APP for State and learned advocate for informant. Perused the

record.

5. *Prima facie*, spot panchnama and post mortem report confirm the fact that deceased has met with an accident. In the spot panchnama marks of skidding of motorcycle are mentioned. The head injury is suffered by deceased on parietal side also *prima facie* indicates that, the same is caused in an accident. Except statement of Sangram Bhopi claiming that appellants/accused allegedly gave extra judicial confession to him, there is nothing on record to show that appellants have committed murder of Atul. Even if prosecution's case is taken as it is, utmost Section 304-A of IPC can be said to be attracted in the facts of the present case and not Section 302 of IPC.

6. Learned Additional Sessions Judge has ignored the relevant aspects while rejecting the bail application of appellants. The impugned order therefore cannot be sustained. Investigation is almost complete and charge sheet is likely to be filed in near future. Therefore, appellants need not be indefinitely detained.

7. In the result, appeal is allowed

8. Impugned order dated 16.02.2024, passed by learned Additional Sessions Judge, Nilanga, Dist. Latur, in Criminal Bail Application No. 14/2024, is quashed and set aside.

Bhagyawant Punde

9. Appellants- Gafur Mahetab Tamboli and Dilip Govindrao Munjal, be released on bail in connection with C.R. No. 246/2022, registered with Nilanga Police Station, Dist. Latur, for offences punishable under sections 302 r/w 34 of Indian Penal Code and under section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on executing Personal Bond and Surety Bond of Rs. 25,000/- each with one surety each in the like amount.

10. Till filing of charge sheet, appellants shall attend the concerned police station on every Sunday, between 10.00 am to 12.00 noon and shall co-operate in the investigation. Appellants shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI, J.]