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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.272 OF 2024

Arjun Dhenu Rathod

APPELLANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

WITH
CRIMINAL APPEAL NO.274 OF 2024

Nilabai Uttam Rathod

APPELLANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

.....
Mr. Joydeep Chatterji, Advocate for the appellants
Mr. S. R. Wakle, APP for respondent - State
Mr. S. R. Mantri, Advocate for respondent No.3 (appointed)
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd APRIL, 2024

ORDER :

1. Criminal Appeal No. 272 of 2024 is filed by appellant Arjun Dhenu Rathod, challenging order dated 5th March, 2024 passed by learned Special Judge, Osmanabad in Anticipatory Bail Application No. 84 of 2024 filed in Crime No. 65 of 2024 registered with Naldurg Police Station, District – Osmanabad for offence punishable under sections 302, 201, 34 of the Indian Penal Code and under section 3 (2) and 3 (v) of Scheduled Castes

Scheduled Tribes (Prevention of Atrocities) Act and under section 7 (1) (d) of the Protection of Civil Rights Act.

2. Appeal No. 274 of 2024 is filed by co-accused Nilabai Uttam Rathod in the said crime, for regular bail, challenging order dated 5th March, 2024 passed by learned Additional Sessions Judge, Osmanabad in Bail application No. 99 of 2024.

3. FIR is lodged by respondent No.3 alleging that he, along with his family and parents is working at the brickkiln of Uttam Rathod at Narkhodi Tanda. Along with them, other workers also work there. Sister of informant is married and her husband was also doing labour work with them. Husband of his sister had gone to Itkal, Uttam Rathod was trying to make advances towards his sister. His father had seen his sister and Uttam talking with each other. Therefore, his father had given understanding to his sister. At that time, Uttam Rathod and his wife Nilabai (appellant) and brother Arjun (appellant) had threatened his father not to disclose this fact to anybody. On 10th February, 2024, they worked at the brickkiln. Thereafter, at 5.00 p.m. he, along with his father, went to Jalkot for weekly market. They returned at 7.00 p.m.. After having food at 8.30 pm, his father went to office of brickkiln for sleeping. He heard shouts from the office at 11.30 p.m. Hence, he called his uncle

Sudhakar. When they were proceeding towards the office, owner Uttam Rathod came there in frightened condition and told them that father of informant has suffered injuries due to fall from motorcycle. There was blood on his hand. Then informant and his uncle went in the office and saw that his father Sahdeo was lying on ground in unconscious condition and there were bleeding injuries on backside of his head and face. There was blood on ground and blood stains were there on wall. One axe, having iron handle was lying there in broken condition. When informant and his uncle asked Uttam as to what happened, he did not reply. Thereafter, father of informant was taken to hospital and while taking him to hospital, informant asked his parental aunt's daughter Prajakta to lock the office, as there was blood and axe was lying there. In the morning at 8.30 a.m. Prajakta informed him that appellants broke open lock of office and cleaned blood stains and took away the axe.

4. Heard learned advocate for appellants, learned APP for the State and learned advocate for respondent No.3 - informant. Perused the papers of investigation.

5. Appellant Nilabai, was arrested on 23rd February, 2024 and the axe, allegedly used in the crime, is already recovered from her. Main accused Uttam, against whom allegations of murder

are made, is arrested on 12th February, 2024 and he is in jail.

6. Except the allegations of causing disappearance of evidence, punishable under section 201 of the Indian Penal Code, there are no other allegations levelled against appellants, in the present crime. Investigation is going on and charge sheet is yet to be filed.

7. There is no material on record to show that only because deceased belonged to Scheduled Caste, he was attacked and murdered. Therefore, *prima facie*, offence punishable under the Atrocities Act, are not attracted in the present case. Therefore, bar under section 18 of the Atrocities Act would not be applicable. Since nothing is to be recovered from appellant Arjun, his pretrial custodial detention is not necessary.

8. As Appellant Nilabai was arrested on 23rd February, 2024 and weapon allegedly used in the crime is recovered from her and since charge sheet is yet to be filed and considering the allegations levelled against her and her gender, she need not be detained in jail for indefinite period.

9. In the result, following order -

ORDER

A. Criminal Appeal No. 272 of 2024 is allowed.

- B. Impugned order dated 5th March, 2024 passed by learned Special Judge, Osmanabad in Anticipatory Bail Application No. 84 of 2024 is quashed and set aside.
- C. In the event of arrest of appellant - Arjun Dhenu Rathod in connection with Crime No. 65 of 2024 registered with Naldurg Police Station, District - Osmanabad, he be released on executing Personal Bond and Surety Bond of Rs.25,000/- with one surety in the like amount.
- D. Appellant - Arjun Dhenu Rathod shall attend the concerned police station from 27th April, 2024 to 4th May, 2024 everyday between 10.00 a.m. and 02.00 p.m. and shall co-operate in the investigation.
- E. Criminal Appeal No. 274 of 2024 is allowed.
- F. Impugned order dated 5th March, 2024 passed by learned Additional Sessions Judge, Osmanabad in Bail Application No. 99 of 2024 is quashed and set aside.
- G. Appellant Nilabai Uttam Rathod be released on bail in connection with Crime No. 65 of 2024 registered with Naldurg Police Station, District - Osmanabad, on executing Personal Bond and Surety Bond of Rs.25,000/- with one

surety in the like amount.

- F. Learned advocate appointed for respondent No.3 be paid fees as per schedule within four weeks.

[NITIN B. SURYAWANSHI]
JUDGE

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