



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 899 OF 2024

Sudam S/o Punju Koli
VERSUS
The State Of Maharashtra And Another

Mrs. Aishwarya C. Deshpande h/f Mr. Chaitanya C. Deshpande, Advocate
for the appellant
Mr. B. B. Bhise, APP for the respondent/State
Mr. A. C. Sisodiya h/f Mr. Shahsank Choudhari, Advocate for respondent
no.2.

CORAM : R. M. JOSHI, J.

DATE : 22nd OCTOBER, 2024

PER COURT :-

1. Appellant seeks regular bail in connection with Crime No. 229 of 2024 registered with Shirpur City Police Station, Dhule, District Dhule for the offence punishable under Sections 302, 324, 323 r/w 34 of the Indian Penal Code and Sections 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2 First information report indicates that the informant had been to Karwand to his maternal uncle Devidas where there was a attended a mehendi programme. He states that his maternal uncle's son came crying home. He told them that at the programme of mehendi of Vishal Koli, he was kicked by accused Vijay. Informant along with his uncle went to the spot and questioned him about the said incident. At that

time Vijay assaulted maternal uncle of the informant with gupti like weapon over his stomach, chest and hand. Allegation against the present appellant is that he caused assault with kick and fist blows. In the said incident deceased died, offence under Section 302, 324, 323 r/w 34 of IPC along with provisions of Atrocities Act are made applicable.

3. Learned counsel for the appellant submits that from the first information report it is clear that the incident in question has occurred spontaneously and that this is not the case of premeditated assault. According to her the allegation against the present appellant is of causing assault with kick and fist blows. She makes statement, on instructions, that the appellant has no criminal history behind him. According to her after filing of charge-sheet, appellant is entitled for bail.

4. Learned APP and learned counsel for the informant opposed the appeal by citing seriousness of the crime. It is their contention that the presence of the appellant at the spot and also his involvement in this crime by way of causing assault can be seen not only from the first information report but also from statements of the eye witnesses recorded under Section 164 of the Code of Criminal Procedure.

5. As rightly pointed out by the learned counsel for the appellant the incident of assault is apparently instantaneous. Even it is

not the case of the prosecution that there was any conspiracy or an premeditated attack on deceased by the accused herein. In the light of these facts, allegations against the present appellant is of causing assault on deceased with kick and first blows. Though Section 34 is made applicable, this Court *prima facie* finds submission in the submission of learned counsel for the appellant that considering the manner in which the incident has occurred, appellant sharing of common intention with co-accused can not be attributed to the present appellant. Having regard to the afore stated facts and considering the role of the present appellant in the crime, he is entitled to release on bail after filing of the charge-sheet. He has no criminal history and not likely to flee from justice. Hence, appeal stands allowed.

7. Having regard to these facts, appeal is allowed in following terms:

ORDER

(i) Appellant in connection with Crime No. 229/2024 registered with Shirpur City Police Station, Dist. Dhule for the offence punishable under Sections 302, 324, 323 r/w 34 of the Indian Penal Code and Section 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, he shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) with one solvent surety in the like amount.

(ii) He shall attend the concerned police station as and when required.

(iii) He shall not contact the witnesses directly or indirectly.

(iv) He shall not interfere with the evidence in any manner whatsoever.

(R. M. JOSHI, J.)

ssp