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APEAL-973-2023

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 973 OF 2023

Shivaji Yeshwant Tidke

...Appellant

Versus

The State of Maharashtra & Another

...Respondents

Mr. Avinash Hande, Advocate for appellant.

Mr. S.B. Jadhav, APP for State.

Mr. S.G. Magare, Advocate for respondent No. 2.

WITH
CRIMINAL APPEAL NO. 974 OF 2023

Narayan Vishwanath Tidke

...Appellant

Versus

The State of Maharashtra & Another

...Respondents

Mr. Avinash Hande, Advocate for appellant.

Mr. S.B. Jadhav, APP for State.

Mr. S.G. Magare, Advocate for respondent No. 2.

WITH
CRIMINAL APPEAL NO. 985 OF 2023

Krishna Govindrao Tidke

...Appellant

Versus

The State of Maharashtra & Another

...Respondents

Mr. R.K. Ingole, Advocate for appellant.

Mr. S.B. Jadhav, APP for State.

Mr. S.G. Magare, Advocate for respondent No. 2.

WITH
CRIMINAL APPEAL NO. 1016 OF 2023

Bhagyawant Punde

Madhav Govind Tidke

...Appellant

Versus

The State of Maharashtra & Another

...Respondents

Mr. S.R. Bagal h/f. Mr. B.N. Gadegaonkar, Advocate for appellant.

Mr. S.B. Jadhav, APP for State.

Mr. S.G. Magare, Advocate for respondent No. 2.

**WITH
CRIMINAL APPEAL NO. 1027 OF 2023**

Nilkanth Ganesh Tidke

...Appellant

Versus

The State of Maharashtra & Another

...Respondents

Mr. Avinash Hande, Advocate for appellant.

Mr. S.B. Jadhav, APP for State.

Mr. S.G. Magare, Advocate for respondent No. 2.

**WITH
CRIMINAL APPEAL NO. 1037 OF 2023**

Baburao @ Babarao Sonaji Tidke

...Appellant

Versus

The State of Maharashtra & Another

...Respondents

Mr. S.J. Salunke, Advocate for appellant.

Mr. S.B. Jadhav, APP for State.

Mr. S.G. Magare, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 4th JANUARY, 2024

PRONOUNCED ON: 31st JANUARY, 2024

ORDER :

1. These appeals filed under section 14-A(2) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Act of 1989'), challenge rejection of bail applications of appellants by Sessions Court, Nanded.

2. Appellants are arrayed as accused in FIR at Crime No. 392/2023, registered with Nanded (Rural) Police Station, for offences punishable under sections 302, 307, 324, 323, 114, 115, 336, 294, 143, 147, 148, 149, 504 of Indian Penal Code and under section 3(1)(r)(s), 3(2)(v), 3(2)(va) of Act of 1989 and under section 4 read with Sections 25 and 27 of Arms Act.

3. Aakash Bhalerao, a member of Scheduled Caste lodged FIR alleging that on 01.06.2023, at about 7.30 pm, at village Bondar, he and deceased went to purchase grocery. At that time, marriage procession of Narayan Tidke, a member of Maratha community was in progress and people were dancing on the music played on DJ system. Accused persons were carrying weapons like sword, daggers, sticks and wooden poles while dancing in procession. At about 7.30 pm, after seeing informant and his brother, accused Santosh Tidke abused them in the name of their caste. He also said that as to how they took out

Bhim Jayanti procession in the village and they should be killed. Then Krishna Tidke, Nilkanth Tidke, Narayan Tidke and Shivaji Tidke all assaulted his brother Akshay with dagger on his stomach. When informant tried to intervene Madhav Tidke, Baburao Tidke and Balaji Mungal abused him and assaulted him with kick and fist blows. Datta gave blow of dagger on his left arm, therefore, he sustained injury. At that time, accused persons also assaulted his mother. Due to said assault Akshay died and informant and his mother sustained injuries.

4. Appellants were arrested pursuant to registration of crime and on completion of investigation charge sheet is filed. Sessions Court rejected respective bail applications filed by appellants under section 439 of Cr.P.C. Hence, these appeals.

5. Heard learned advocates for appellants, learned APP for respondent-State and learned advocate for respondent No. 2.

6. Learned advocates for appellants submitted that appellants have not assaulted deceased with any weapon. They have not participated in homicidal death of deceased Akshay. Merely, because appellants were present in procession it cannot be said that they were part of unlawful assembly. No recovery is

effected from appellants. Merely because appellants are from the brotherhood of Tidke group which is a rival group of informant's Bhalerao group, they are arrayed as accused. None of the witnesses have stated about active participation of appellants in the crime. Appellants are bread earners of their family and they may be released on bail and since charge sheet is filed, further custodial detention of appellants is not necessary. Reliance is placed on order passed by this Court (Coram: R.M. Joshi, J.) in Criminal Appeal No. 781 of 2023, thereby releasing one of co-accused namely Balaji Mungal on bail. It is therefore claimed that on the ground of parity also appellants are entitled to be released on bail.

7. Learned advocate for respondent No. 2 vehemently opposed the appeals. He submitted written notes of arguments and compilation of citations in support of his argument that assembly of accused persons was unlawful from its very inception as accused persons were carrying weapons like sword, dagger, wooden sticks, wooden poles and knives, which were banned by notification dated 26.05.2023 issued by Additional District Magistrate, Nanded under the provisions of Section 37(1) (3) of Maharashtra Police Act. It is submitted that each of

accused is as guilty as accused stabbing the deceased. Reliance is also placed on Section 8 of Act of 1989, which raises a presumption. According to him, there was a pre-existing dispute in relation to procession carried out on Amedkar Jayanti. It is submitted that accused persons have committed serious offence of murder of young person and therefore they do not deserve bail. In support of his submissions, he relied on Dani Singh and others v. State of Bihar, (2004) 13 SCC 203, Kattukulangara Madhavan v. State of Kerala (2017) 5 SCC 568, Ajwar v. Niyaj Ahmad and another, 2022 SCC OnLine SC 1403, Jayaben v. Tejas (2022) 3 SCC 230, Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230, Rohit Bishnoi v. State of Rajasthan 2023 SCC OnLine 870, Hariram Bhanbi v. Satyanarayan, AIR 2021 5610 and Sundeep Kumar Bafna v. State of Maharashtra and another, (2014) 16 SCC 623.

8. Heard learned advocates for appellants, learned APP for respondent-State and learned advocate for respondent No. 2 at length. Perused investigation papers, written notes of arguments and citations.

9. Charge sheet in the present matter is filed on 14.07.2023 against nine accused persons named in the FIR.

Bhagyawant Punde

Appellants namely Shivaji Tide (A-7), Narayan Tidke (A-4), Madhav Tidke (A-5), Nilkanth Tidke (A-3), Krishna Tidke (A-6), were arrested on 02.06.2023 and appellant and Babarao @ Baburao Tidke (A-9), was arrested on 24.06.2023. From charge sheet it transpires that weapons used in the crime i.e. two dagger, one sword, and six sticks are seized in the investigation from Santosh Tidke (A-1). Actual assault with dagger on deceased and informant is also attributed to Santosh Tidke (A-1) and Datta Tidke (A-2).

10. Post mortem report shows following injuries on the person of deceased:-

- i) Stab injury over epigastric and left hypochondriac region, obliquely placed 3cm below left subcostal margin.
- (ii) Graze abrasion present over lateral aspect of right forearm, lower part, of size 7cm X 3cm.
- (iii) Graze abrasion over right trapezoid region of size 6.5cm X 2cm.
- (iv) Graze abrasion over left arm, posterior aspect upper part, of size 1.5cm X 05.cm.
- (v) Contused abrasion present over back of right elbow of size 1cm X 1cm.
- (vi) Contused abrasion present over shin of right tibia upper 3rd part of size 1cm X 1cm.
- (vii) Contused abrasion present over dorsum of second toe of right foot of size 1cm X 0.5cm.
- (viii) Contused abrasion present over right side of back, 5cm below lower angle of scapula of size 0.5cm X

05.cm.

11. Perusal of injury certificate of informant shows that he has suffered one incised wound on left arm, which is attributed to Datta (A-2). Injury certificate of informant's mother shows that she has suffered blunt trauma on right knee and parital avulsion of right great toe (foot).

12. *Prima facie*, stab injury and incised wound of informant are attributable to Santosh Tidke (A-1) and Datta Tidke (A-2). Admittedly, incident has taken place while marriage procession was going on, therefore, it cannot be said to be premeditated. The incident is alleged to have taken place at the instance of Accused No. 1 and 2. Most of grazed abrasions and contusions are suffered by deceased on back side of his body. These injuries are possible due to fall and friction of body with road.

13. In the FIR specific allegations are levelled against Krishna Tidke (A-6), Nilkanth Tidke (A-3), Narayan Tidke (A-4) and Shivaji Tidke (A-7) that they assaulted deceased with sticks, kicks and fist blows. They also instigated accused No. 1 and 2 to kill deceased. So far as Madhav Tidke (A-5) and Baburao Tidke (A-9) are concerned it is alleged that they assaulted informant

Bhagyawant Punde

with fists and kick blows. It is further alleged that Madhav Tidke (A-5) and Baburao Tidke (A-9) assaulted informant's mother with sticks and stone.

Column No. 17 of post mortem report does not show injuries caused by sticks, fists and kick blows on the body of deceased, which are attributable to appellants- Krishna Tidke, Narayan Tidke, Shivaji Tidke and Nilkanth Tidke. In the FIR it is specifically alleged by informant that Krishna Tidke, Nilkanth Tidke, Narayan Tidke and Shivaji Tidke assaulted deceased with sticks, kicks and fists blows. But, there are no corresponding injuries in the post mortem report. It is further alleged in the FIR that these accused instigated Accused No. 1 and 2 to kill the deceased. It is difficult to believe that all these accused in chorus have instigated accused No. 1 and 2 to kill deceased and called name of cast of deceased. *Prima facie*, possibility cannot be ruled out that appellants are implicated, as they participated in the marriage procession.

14. In the FIR there is no allegation that Baburao Tidke (A-9) assaulted deceased. Allegation against him is that he along with Balaji Mungal (A-8) and Madhav Tidke (A-5) assaulted informant with kicks and fists blows and he with Madhav Tidke

(A-5) assaulted mother of informant with sticks and stone.

15. This Court has released co-accused Balaji Mungal (A-8), who is similarly situated like Baburao Tidke (A-9). This Court while releasing Balaji Mungal (A-8) has observed;

'Though Sections 147, 148 and 149 of IPC are sought to be made applicable to the present appellant but pertinently there is no role at all shown by informant himself in the assault caused on the brother of the informant. As recorded earlier it is the incident was not premeditated. Spontaneity of the incident is not ruled out. As far as the carrying weapon like sword and dagger in the marriage procession is concerned, the photograph placed on record by the learned counsel for the informant shows that the bridegroom is seen holding the sword in his hand and someone else displaying dagger. Rightly or wrongly there is practice followed of carrying such weapons in the procession which is known fact. Therefore, it cannot be held at this stage that the weapons were carried in order to cause assault on someone. Prima facie breach of prohibiting order, in present case is not sufficient to attach premeditation to use these weapons or common object being stood by all accused cannot be inferred.'

Therefore, on the ground of parity Babarao @ Baburao Sonjai Tidke (A-9) is entitled to be released on bail.

16. While opposing appeals, learned advocate for informant has placed strong reliance on Dani Singh (supra), Kattukulangara Madhavan (supra), Ajwar (supra) and Jayaben

(supra), which are on the point of common object under section 149 IPC. In the facts of present case, since, incident has taken place while marriage procession was going on, it cannot be said that common object of accused was to kill the deceased.

17. Ramesh Rathod (supra), is on the point of parity with co-accused and manner in which parity is to be determined. There cannot be any dispute about proposition of law laid down in the said case.

18. In Rohit Bishnoi (supra), Apex Court has emphasized that there should be reasoned order while granting bail under section 439 Cr.P.C.

19. Hariram Bhanbi (supra), in which plea seeking cancellation of bail was rejected by the High Court and Apex Court cancelled the bail on the ground that there is absolutely no reasoning in the order of High Court granting bail.

20. In the present case, it is not the case of prosecution that appellants were carrying dangerous weapons like dagger and sword. Those allegations are not attributed to appellants. It is common knowledge that in marriage procession it is general practice to carry dagger and sword, but not sticks. Appellants

are arrested on 02.06.2023 and 24.06.2023 and since then they are in jail. Trial is not likely to commence in near future. All appellants are permanent residents of their native village having movable and immovable properties and they are not likely to abscond if released on bail. There are no criminal antecedents against them. Therefore, appellants are entitled to be released on bail. Hence, the following order:

ORDER

- (i) Criminal Appeal Nos. 973 of 2023, 974 of 2023, 985 of 2023, 1016 of 2023, 1027 of 2023 and 1037 of 2023 are allowed.
- (ii) Order dated 03.10.2023 passed by learned Additional Sessions Judge, Nanded, below Exhibit Nos. 2, 21, 22, 28 and order dated 12.10.2023, below Exhibit-15 in Special Case No. 99/2023, are hereby quashed and set aside.
- (iii) Appellants- Shivaji Yeshwant Tidke, Narayan Vishwanath Tidke, Krishna Govindrao Tidke, Madhav Govind Tidke, Nilkanth Ganesh Tidke and Baburao @ Babarao Sonaji Tidke be released on bail in connection with Crime No. 392/2023, registered with Nanded Rural Police Station, Dist. Nanded, for the offence punishable under Sections 302, 307, 324, 323, 114, 115, 336, 294, 143, 147, 148, 149, 504 of Indian Penal Code and under section 3(1)(r)(s), 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under sections 4/25 and 4/27 of Arms Act, on furnishing PB and SB of Rs. 30,000/- (Rupees Thirty Thousand Only) each with one

or two sureties in the like amount.

- (iv) They shall attend the concerned police station once in a month for period of six months from today.
- (v) They shall not contact the witnesses directly or indirectly.
- (vi) They shall not interfere with the evidence in any manner whatsoever.
- (vii) Bail before Trial Court.

21. High Court Legal Services, Sub Committee, Aurangabad, to pay fees of learned advocate appointed to represent respondent No. 2, as per rules, within four weeks from the date of receipt of order.

[NITIN B. SURYAWANSHI, J.]