



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 1142 OF 2023

1. Sagar Ganpat Kharat
2. Rohan @ Sunny Ganpat KharatAppellants

VERSUS

1. The State Of Maharashtra
2. Aruna Sheshrao AdhavRespondents

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Mr. Satej Jadhav, Advocate for appellants.

Mr. A.R. Kale, APP for respondents.

Mr. Shashikant Shekade, Advocate appointed to represent
Respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 4th JANUARY, 2024

ORDER :

1. Leave to correct prayer clause. Correction to be carried out forthwith.
2. By this appeal, appellants challenge the order passed by learned Special Judge, SC ST (POA) Act, Aurangabad, below Bail Application Exhibit No. 61 in Sessions Case No. 317 of 2022.
3. Appellants are original accused No. 3 and 5 in Crime No. 195/2022, registered with CIDCO Police Station, Aurangabad, for the offences punishable under sections 302,

143, 147, 148, 120-B, 201, 114 read with 149 of Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. It is the case of the prosecution that on 21.04.2022 informant Aruna Sheshrao Avhad, who is the mother of deceased lodged a report with police that she is residing in Pivali Colony, Aurangabad and does household work of other people for survival. She has six sons out of which deceased Manoj aged 27 years was her fourth son. Deceased Manoj along with his wife was residing in one room of Meghawale function hall, situated at N-12, Aurangabad. Since last one month, wife of deceased had gone to her parents house, as she was not keeping well. Sons of late Shri. Ganpat Kharat are looking after the affairs of the function hall and deceased Manoj was serving as watchman/caretaker of function hall. Deceased Manoj from the previous day had been to the house of informant. On asking, deceased told her that he is removed from the work of watchman. On 20.04.2022, at about 3.00 pm Mandapwale Satish Khare and 5 to 6 persons came to her house and took deceased with them for carrying out work of pendol. Thereafter, informant along with her son Bharat went to Shendra to attend a function

of relative. At that time, they received a video on the mobile phone of Bharat, which showed that deceased Manoj was being assaulted by tying his hands and legs. Informant along with Bharat went to the house of Mandapwale Khare for making inquiry, but they were not found there. Thereafter, informant also went to Meghawale function hall, but its gate was locked. On inquiry with the adjoining occupants, they were told that persons appearing in the video, assaulting deceased by tying his hands and legs are accused Satish Khare, Anand Solas, Anand Gaykawad, Sagar Kharat and his brother Ashtapal Gawai and three unknown persons working with Satish Khare. Thereafter, informant went to the police station where it was informed to her that Ashtapal Gawai has admitted Manoj in Ghati hospital and went away. On examination, medical officer declared Manoj dead.

5. Appellants earlier preferred Criminal Appeal No. 765 of 2022. It was at that point of time placed before the learned Division Bench, which permitted appellants to withdraw the appeal as learned Division Bench was not inclined to grant relief. Accordingly, vide order dated 11.11.2022, learned Division Bench disposed of the appeal as withdrawn with liberty to

appellants to move fresh application for bail after a period of nine months from that date. Bail Application Exhibit-61 filed by appellants after a period of nine months is rejected by the Sessions Court. Hence, the present appeal.

6. Learned advocate for appellants has strenuously urged that appellants have not played any role in the alleged offence. He placed reliance on examination report of video recording wherein it is mentioned that both appellants are not found present in the reference video recording. By relying on the same, he urged that appellants have not actively participated in the alleged offence and no specific role is attributed to them and since charge sheet is filed and appellants are arrested since 21.04.2022 and as the trial has not commenced so far, they may be released on bail.

7. Learned APP on the other hand by relying on the investigation papers and the statement of eye witnesses has opposed the appeal stating that appellants have actively participated in the commission of offence, which is clear from the statement of eye witnesses particularly from the statement of eye witness Shubham who has recorded the incident of assault on his cell phone.

8. Heard the learned advocate for appellants and learned Additional Public Prosecutor for respondent No. 1-State and learned advocate for respondent No. 2. Perused the investigation papers.

9. Perusal of statement of eye witness Shubham shows that he has witnessed accused persons assaulting deceased Manoj. He has specifically stated that both appellants have participated in the assault. He has further stated that he has stopped shooting video in the midst with a fear that if somebody notices that he is shooting video of assault, he will be killed. From investigation it is clear that accused persons had common object to assault Manoj, which has resulted into death of Manoj. Prima facie it appears that appellants are involved in the serious crime of committing murder of Manoj, which is apparent from investigation papers and as Sections 143, 147, 148 and 149 are attracted in the present matter, appellants do not deserve bail. No case is made out by appellants for grant of bail. Appeal being devoid of merit is dismissed.

10. 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.]