

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.271 OF 2024**

Tushar @ Nikhil Shivaji Pawar
V/s.

....Appellant

State of Maharashtra and Anr.

....Respondents

Mr. Sangram Desai with Mr. Rohit Mahadik with Mr. Vaibhav Kulkarni, Mr. Farhan Shaikh i/b. M/s. Khandeparkar and Associates for the Appellant

Ms Shilpa K. Gajare-Dhumal, APP for Respondent No.1-State

Mr. Rahul Khot for Respondent No.2.

Mr. Nitin Narale, PSI, Sawantwadi Police Station, Sindhudurg. Present.

CORAM : SANDEEP V. MARNE, J.

Dated : 3 July 2024.

P.C. :

1) This is an appeal under the provisions of Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act**) challenging order dated 21 October 2023 passed by the Special Judge, Sindhudurga at Oras, rejecting the application filed by the Appellant seeking bail in connection with C.R. No.28 of 2023 registered with Sawantwadi Police Station, District-Sindhudurg for the offences punishable under Sections 302, 364, 365, 201, 341 and 342 r/w. 34 of the IPC and Sections 3 (2)(v) of the SCST Act.

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2) Prosecution story is that the deceased had some business transaction relating to manufacturing of bricks with the first accused-Bhauso Arun Mane and the deceased owed some money to the first accused. That the first accused and the present Appellant were friends. That on 11 January 2023 some persons took along the deceased under the guise of having a cup of tea, from which time, the deceased went missing. That Mr. Kailas Waydande, relative of the First Informant received a phone call from the deceased after few days asking for amount of Rs.3,50,000/- to be paid to the first accused. The deceased informed him that he was held captive by the first accused for the reason of non-repayment of amount of Rs.3,50,000/-. On 29 January 2023, the deceased has telephonic conversation with his mother and informed her that Accused Nos. 1 and 2 (including the Appellant) assaulted him with stick and belt and that in the event of non-arrangement of the amount, they were likely to kill him. On 31 January 2023, Mr. Kailas Waydande received a phone call from Sawantwadi Police about discovery of dead body of the deceased in Amboli Ghat. This is how the FIR came to be registered. Though in the FIR, initially only two accused- Bhauso Arun Mane and Tushar Shivaji Pawar (Appellant) were included, it appears that subsequently accused Nos.3 and 7 were also added on the ground that on the date of the incident they partied with the first two accused and were involved in the assault committed on deceased leading to his death. So far as Accused No.1-Bhauso Arun Mane is concerned, the prosecution story is that while disposing of the body of the deceased on 31 January 2023, he fell into the valley and got killed. It is the prosecution story that the present Appellant

was present alongwith Bhuaso Mane at the spot where the body was disposed of.

3) I have heard Mr. Sangram Desai, the learned counsel appearing for the Appellant, who submits that out of total 7 accused, one has already passed away and five other accused are already released on bail. That there is complete parity between the Appellant and other five released accused so far as the allegations of commission of assault on the date of the incident is concerned. That the only additional role ascribed to the Appellant is with regard to disposal of the body, which would, at the highest, attract Section 201 of the IPC, which is a bailable offence. He would submit that main reason, which weighed by the learned Special Judge for rejection of appeal is reflection of the name of the Appellant in the FIR and conversation between the mother and the deceased about assault by Bhuaso Mane and Appellant by belt and sticks. He would further take me through the statement of mother of the deceased recorded on 8 February 2023, which does not reflect Appellant's name. He would submit that no recovery is made from the Appellant, whereas the other accused are released on bail despite the recovery of weapons used for assault. That the Appellant does not have any motive for commission of crime and it is an admitted position that there is absolutely no connection with the transaction in question with Appellant. He would submit that the Appellant does not have any previous criminal antecedents. He would therefore pray for setting aside of the impugned order passed by the learned Special Judge and for release of the Appellant on bail.

4) Mr. Rahul Khot, the learned counsel for Respondent No.2 would vehemently oppose the appeal submitting that there is absolutely no parity between the Appellant and other accused, who are released on bail. That the Appellant was in thick friendship with first accused -Bhauso Mane. That after the incident of murder on 29 January 2023, both Bhauso Mane and Appellant were seen together in the house together, which is vouched by the first accused's father in his statement. That Appellant has disposed of the body of the deceased and the accused Nos.3 to 7 are not involved in the said act. He would take me through transcript of recorded conversation between the deceased and his family members to demonstrate as to how the Appellant was actively involved in commission of the crime. He would therefore submit that no parity can be traced between the role played by the Appellant with that of the accused Nos.3 to 7. He would pray for dismissal of the appeal.

5) Ms Shilpa Dhumal, the learned APP for the Respondent -State would also oppose the appeal. She would submit that presence of Appellant together with Bhauso Mane with the dead body has been noticed at three toll *nakas*. That the Appellant is involved in the acts of carrying of the body and its disposal alongwith Bhauso Mane. That the investigations reveal that the Appellant is close friend of Bhauso and had every motive to commit the crime. He would pray for dismissal of the appeal.

6) I have considered the submissions canvassed by the learned counsel appearing for the respective parties and have perused the records of the case.

7) The Appellant has been arrested on 2 February 2023 and has been in custody since then. As observed above, initially the FIR reflected names of

accused Nos.1 and 2 and latter, names of accused Nos. 3 to 7 came to be added. Common role assigned to all the accused is in respect of the incident dated 29 January 2023, when all the seven accused allegedly partied together and in the process, brutally assaulted the deceased leading to his death. Thus, so far as the act of commission of assault on the deceased is concerned, the role assigned to all the 7 accused appears to be common. The only additional role that has been ascribed to Appellant is about disposal of the body.

8) The motive to commit crime can prima facie be attached to the first accused who apparently owed about of Rs. 3,50,000 from the deceased. Admittedly there is no business transaction between the Appellant and deceased. Therefore, existence of motive for Appellant to commit the crime becomes questionable. No doubt, the Appellant is ascribed with the role of destruction of evidence by assisting the first accused to throw the body of the deceased in the valley, this act would attract provisions of Section 201 of the IPC, which is a bailable offence.

9) The learned Special Judge appears to have been mainly impressed by reflection of name of the Appellant in the FIR as well as by alleged conversation between deceased and his mother. Perusal of the statement of first informant recorded at the time of registration of the FIR would indicate that he has referred to a conversation between the deceased and his mother on 29 January 2023 at 5.30 p.m. when the deceased allegedly informed the mother that accused No.1 and the Appellant had assaulted the deceased with sticks and belt and that in the event of non-arrangement of amount immediately, they were likely to kill him. However, the mother's statement

was subsequently recorded on 8 February 2023, in which she does not refer to Appellant's name in any manner. Her statement indicates that during the course of the said telephonic conversation, the mother was requested for arrangement of funds by the next following day and that the deceased disconnected the phone after informing about arrival of Bhausahab Mane. Mother's statement thus does not indicate the act of assault either by Bhauso Mane or by the present Appellant. The learned Special Judge had apparently not taken into consideration this statement recorded on 8 February 2023 and got unnecessarily swayed by statement of Kalyan Randive recorded on 2 February 2023.

10) In my view, parity is established between the role ascribed to Appellant and accused Nos.3 to 7, except the additional factor of Appellant's involvement in destruction of evidence. The investigations are already completed and charge-sheet has been filed. No recovery is made at the instance of the Appellant. The Appellant has been in custody for substantially long time i.e. from 2 February 2023. The trial is not likely to commence or conclude in near future. Appellant cannot be kept incarcerated indefinitely. In my view therefore, case is made out for enlargement of the Appellant on bail.

11) I accordingly, proceed to pass following order:

(a) Order dated 21 October 2023 passed by the learned Special Judge, Sindhudurg at Oras is set aside.

(b) The Appellant, who is arrested in connection with C.R. No.28 of 2023 registered with Sawantwadi Police Station, District-

Sindhudurg for the offences punishable under Sections 302, 364, 365, 201, 341 and 342 r/w. 34 of the IPC and Sections 3 (2)(v) of the SCST Act, be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

- (c) The Appellant shall furnish identity and address proof of himself and of his two blood relatives while furnishing sureties.
- (d) The Appellant shall attend Trial Court regularly unless exempted from personal appearance.
- (e) The Appellant shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.
- (f) The Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Trial Court as well as to the concerned Police Station in writing.

12) It is clarified that the findings recorded in the order are prima facie and the Trial Court shall decide the case on its own merits without being influenced by those findings. With the above directions, the Appeal is **allowed and disposed of.**

[SANDEEP V. MARNE, J.]