

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.459 OF 2024

Ganesh Subhedar Pawar
Age 39 years, Occ. Business,
R/at Keshavnagar,
Sangram Housing Society,
Building S-31, Chinchwad, Pune.

....Appellant

V/S

1 The State of Maharashtra
Through Wakad Police Station,
Pune, District Pune.

2 Sheshrao Rangnath Angarakh
Age 67 years, Occ. Nil.
R/at Santosh Nivas Police Colony
Rahatani, Pune.

....Respondents

Mr. Manoj Mohite, Senior Advocate i/b Mr. Suhas B. Rohile *for the Appellant.*

Mr. Shilpa G. Talhar, APP *for Respondent No.1/State.*

Mr. Ankur Pahade, for Respondent No.2.

Mr. Bharat Mane, PSI, Wakad Police Station, Pimpri-Chinchwad present in Court.

CORAM: SANDEEP V. MARNE, J.
RESERVED ON : 26 JULY 2024.
PRONOUNCED ON: 30 JULY 2024.

JUDGMENT

1. This Appeal is filed under provisions of section 14A of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging order dated 12 April 2024 passed by Special

Judge, Pune, rejecting application filed by him for regular bail under section 439 of the Code of Criminal Procedure, 1973 (**Code**).

2. Appellant is arraigned as Accused No.1 in CR No.591 of 2020 (Chargesheet No.288 of 2020) leading to registration of Special Case No.671 of 2020 for offences punishable under sections 302, 363, 364, 201 and 120B of the Indian Penal Code Since the deceased belongs to Scheduled Caste community offences punishable under sections 3(2)(v) and 3(2)(va) of the SC & ST Act are also added.

3. Prosecution story is that Complainant-Sheshrao Rangnath Angarakh (Respondent No.2) is the father of the deceased. The complainant initially filed missing complaint on 25 August 2020 stating that the deceased was missing since 16 August 2020. His supplementary statement was recorded on 26 August 2020 about the description of footwear worn by deceased as well as his identity marks. Since the deceased was not found, complainant recorded another statement on 2 September 2020 about discovery that the deceased has taken money from Appellant, who had twice demanded refund by approaching complainant's house. That deceased had avoided repayment of the amount and on that ground, some disputes had believably occurred between the duo. That the deceased had made a telephonic conversation with his daughter-Sejal on 16 August 2020 at 7.30 p.m. and informed her that he was with Appellant and would return late in the night. However, the deceased did not return home and his phone was found to be switched off upon repeated attempts reach him. Therefore, complainant contacted Appellant and enquired about the deceased, when Appellant gave irrelevant and contradictory responses. Hence Complainant became

sure that there was possibility of Appellant killing the deceased on account of non-refund of his amount.

4. Appellant was arrested on 2 September 2020 and according to the prosecution, the dead body of the deceased was discovered at the instance of the Appellant on 2 September 2020 and a panchanama to that effect was prepared under Section 27 of the Indian Evidence Act, 1872. Thereafter complainant's further supplementary statement was recorded on 4 September 2020. The statements of various other witnesses including, deceased's daughter, were also recorded, in which she referred to telephonic conversation with the deceased in the morning and afternoon of 16 August 2020. Accused No.2-Mangesh Jagtap, Accused No.3-Pradeep Kumar Lalji and Accused No.4-Arvind Ghuge were also arrested. The prosecution accordingly alleges that the four accused conspired to kill the deceased who was abducted and was made to consume alcohol at Laxminarayan Restaurant and Bar, at Kasarsai and thereafter was taken at Pachani, Taluka Mulshi, District Pune and while the deceased was in inebriated stage, he was killed by use of stone and JCB bucket. It is further alleged that with a view to destroy the evidence, a pit was dug by use of JCB and his body was buried in the same.

5. It appears that Appellant filed first application for Bail before the learned Special Judge, which came to be rejected by order dated 23 June 2022. Appellant filed Criminal Appeal No.815 of 2022 in this Court which came to be withdrawn by order dated 21 December 2022 with liberty to file fresh application before the Trial Court if trial in Special case No.671 of 2020 was not concluded within one year.

6. It appears that Accused-Arvind Ghuge came to be released on bail by this Court by order dated 22 September 2021. Accused-Mangesh Jagtap and Pradeep Kumar Lalji came to be enlarged on bail by order passed by this Court on 29 February 2024. Appellant filed second application for Bail before the learned Special Judge, which came to be rejected by order dated 12 April 2024, which is the subject matter of challenge in the present Appeal.

7. I have heard Mr. Manoj Mohite, the learned senior advocate appearing for Appellant, who submits that the entire case is based on circumstantial evidence. That the FIR itself is premised on hearsay as complainant did not have personal knowledge of deceased borrowing any amount from accused. That initial missing complaint was vague and did not contain any reference to telephonic conversation between deceased and his daughter-Sejal. That though alleged recorded conversation between deceased and Sejal is sought to be relied upon, there is no reference to such conversation in Sejal's statement. No Test Identification Parade was conducted before recording statement of the bar operator-Prakash Shankar Yevale or manager-Prashant Shivaji Khadu. Time of death is not ascertained and therefore 'last seen theory' cannot be applied. That extra-judicial confession allegedly made by Appellant to the witnesses is the weakest possible evidence for securing conviction. That the other three accused are already released on bail. That the learned Special Judge has erroneously accused Appellant for delaying trial. That framing of charge in the trial is not delayed at Appellant's instance. Inviting my attention to the roznama, Mr. Mohite would submit that there have been as many as 53

dates before the learned Special Judge after withdrawal of the Criminal Appeal No.815 of 2022 on 21 September 2022. That on 29 out of the said 53 dates, the accused were not produced before the Court, in whose absence their plea could not have been recorded. That the Court was on leave on four dates and roznama on 10 days does not indicate production of the Appellant. In any case, it is Court's power to frame charge and Court can exercise necessary power under section 230 of the Code to ensure that plea of the accused is recorded despite his non-co-operation. That Appellant has right to apply for bail and merely because statement to that effect is made by him on couple of occasions, the same could not have been a reason for the learned Judge to draw an adverse inference of delaying the trial.

8. Mr. Mohite would rely upon the order of this Court in ***Divya Ashok Pahuja vs. State of Maharashtra*** in Criminal Bail Application No.354 of 2023, decided on 20 June 2023. He would also rely upon recent order of the Apex Court in ***Javed Gulam Nabi Shaikh vs. State of Maharashtra***, in Criminal Appeal No.2787 of 2024, decided on 3 July 2024, in support of his contention that the Appellant deserves to be granted bail on account of his incarceration for almost four years. He would therefore pray for setting aside the order passed by the learned Special Judge and for enlarging Appellant on bail.

9. Ms. Shilpa Talhar, the learned APP would oppose the bail submitting that specific role of killing the deceased is ascribed to Appellant. The dead body has been recovered as his instance. There is

concrete evidence that the deceased was last seen in the company of Appellant. That delay in filing the missing complaint has been appropriately explained by complainant. Prosecution desires to rely upon Call Detail Record (CDR) to prove telephonic conversation between deceased and daughter-Sejal as well as recorded conversation supported by certificate under section 65B of the Indian Evidence Act, 1872. That JCB and Scorpio vehicle used for commission of crime has been recovered from Appellant. That Appellant has made voluntary confessional statements to witnesses. That though the case is based on circumstantial evidence, the chain of evidence is complete, thereby indicating commission of crime by Appellant. That Appellant is deliberately delaying the trial only for the purpose of securing bail by taking advantage of liberty granted by this Court vide order dated 21 December 2022. In fact he had suppressed the order passed by this Court from the Trial Court with a view to ensure that the trial is not expedited. Relying on judgment of this Court in ***Aniket Samdhur vs. The State of Maharashtra***, in Criminal Bail Application No.2417 of 2023 decided on 18 March 2024, she would contend that deliberate delay on the part of Appellant is a fit ground for rejection of bail. She would rely upon judgment of the Apex Court in ***Gurwinder Singh vs. State of Punjab and another***, (2024) 5 SCC 403 in support of her contention that the Appellant has not passed the tripod test of flight risk, tampering with evidence and influencing witnesses. She would pray for dismissal of the Appeal.

10. Mr. Ankur Pahade, the learned counsel, who is appointed by the Court from the panel of Legal Aid to represent Respondent No.2-

Complainant would also oppose the Appeal submitting that *prima facie* material exists indicating possible conviction of Appellant. At this stage, the Court has to consider only existence of *prima facie* material and admissibility thereof is required to be ignored. That the present case involves motive, preparation, opportunity and execution. That commission of crime is in a heinous manner by torturing the deceased as is clear from 11 injuries in the post-mortem report. That there is little doubt about the position that bail is sought only for the purpose of shying away from trial. The Appellant stays in the neighbourhood and is known to complainant's family and is bound to influence and pressurize the witnesses. Appellant is also found intimidating the complainant on various dates before the Trial Court. He would therefore submit that this is a fit case for rejection of the Appeal.

11. Having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that this is a second attempt on the part of the Appellant to secure bail. His first Bail Application was rejected by the Special Judge on 23 June 2022, which order was challenged in Criminal Appeal No.815 of 2022. It appears that Division Bench of this Court was not inclined to grant any relief in the Appeal and therefore Appellant withdrew the Appeal on 21 December 2022 and sought liberty to file fresh application for bail before the Trial Court in the event of trial in the case not concluded within a period of one year. Accordingly fresh application for bail was filed by him after completion of period of one year on the ground that the trial was yet to commence. The learned Special Judge has made adverse observations against Appellant by accusing him of

deliberately delaying framing of charge and has proceeded to reject the second bail application.

12. Appellant is the main accused in the case, who not only had the motive to kill the deceased, but is accused of himself killing the deceased. The role assigned to the other three accused is essentially of conspiring and abetting the commission of crime, who had no motive and who apparently assisted Appellant in killing the deceased. The motive ascribed to the Appellant for commission of the crime is twin. Firstly, it is alleged that deceased had borrowed substantial amount from Appellant and was not refunding the same. The second motive is about deceased holding the hand of Appellant's sister. Though the case is based on circumstantial evidence and various loopholes are sought to be pointed out by Appellant so as to break the chain of evidence, it is seen that the dead body has been discovered at Appellant's instance. True it is that the panchanama about discovery of the dead body cannot be read beyond the aspect of discovery made under provisions of section 27 of the Evidence Act. However the fact remains that Appellant has shown the spot at which the dead body was buried after committing the crime. The daughter of deceased-Sejal has given statement about two telephonic calls on 16 August 2020 when the deceased is alleged to be in Appellant's company. Though the said statement of daughter-Sejal is sought to be contradicted by making reference to initial missing complaint dated 25 August 2020 containing no reference to any telephonic conversation, it appears that prosecution wants to rely upon CDR to prove conversation between the duo. It is also claimed by prosecution that the daughter-Sejal has recorded the telephonic

conversation and the said recording is also sought to be relied upon. After 16 August 2020, deceased is not seen in company any other person. Also, prosecution relies on statement of Prakash Shankar Yevle and Prashant Shivaji Kadu to prove that on 16 August 2020, deceased was in the company of Appellant while consuming liquor. In my view therefore *prima facie* last seen theory sought to be proved by the prosecution cannot be said to be totally unbelievable at this stage.

13 True it is that extra-judicial confession allegedly made by Appellant to the witnesses Pandit Natekar, Vithal Sanap, Sharad Khunde etc. may not be very strong piece of evidence *ipso facto* to secure Appellant's conviction. However *prima facie* it appears that the statement of Sharad Khunde indicates plan and preparation for commission of crime. Similarly, statement of witness Vithal Sanap shows procurement of weapon. The statement of witness Pandit Natekar is sought to be relied upon to prove killing of deceased by Appellant. Additionally, statements of few other witnesses for procurement of salt and coal to destroy body are also sought to be relied upon.

14 Mere Appellant's incarceration for almost four years cannot be considered on a standalone basis for twin reasons of existence of *prima facie* material against him and his conduct before the Trial Court after withdrawal of Criminal Appeal No. 815 of 2022 on 21 December 2022. Though Appellant was granted liberty to file fresh application for bail in the event of non-conclusion of trial within one year, it appears that Appellant suppressed the said Order from Trial Court to ensure that the Court does not expediate the Trial. It is the Public Prosecutor who produced the same

on 4 July 2023. Additionally he posed challenges before the learned Special Judge in framing the charge. Belated filing of discharge application by co-accused Arvind Ghuge also added to delay in framing the charge and proceeding ahead with the trial. Though it is sought to be suggested that delay in framing of charge is not attributable to Appellant's conduct, perusal of the roznama of 4 July 2023 specifically makes it clear that Appellant refused to sign the Plea. When the plea was once again sought to be recorded on 18 July 2023, Appellant flatly refused to co-operate by stating that he wanted to approach this Court to secure bail. It therefore cannot be stated that Appellant is not at all responsible for delay in recording his Plea and commencement of trial. The learned Special Judge has also referred to other delaying tactics of making allegations against advocate, changing advocate, etc. for prolonging the trial. In my view therefore mere passage of one year after passing of the order dated 21 December 2022 by this Court could not have been a reason for the Special Court to enlarge the Appellant on bail.

15. Grant of bail to other three co-accused cannot be ground to grant bail to Appellant on the grounds of parity considering the fact that the other accused neither had motive nor the role ascribed to them is in any manner comparable with that of Appellant.

16. Since there is *prima facie* material to indicate presence of motive (non-refund of loan amount and holding hand of sister), preparation (procurement of weapon, coal, salt and JCB), opportunity (taking deceased to Bar for consumption of liquor and taking assistance of Appellant's employees) and execution (discovery of dead body at Appellant's instance),

in my view no case is made out for enlargement of Appellant on bail. In the light of presence of strong incriminating material against the Appellant and the offence being serious which *prima facie* appears to be committed with premeditation, it would not be appropriate to enlarge Appellant on bail. Appellant is also known to the family of the deceased, the possibility of influencing and threatening the witnesses and tampering with the evidence cannot be ruled out.

17. In my view therefore no case is made out for Appellant's enlargement on bail. The Special Court has rightly rejected the second Application for bail. Criminal Appeal being devoid of merits is dismissed. However, in the event Appellant cooperates with framing of charge and conduct of Trial in an expeditious manner and if depositions of vital witnesses are recorded in next one year, the Appellant shall be at liberty to file a fresh application for bail before the Trial Court. The Trial Court shall however not be influenced by the observations made in the order while deciding the case finally.

(SANDEEP V. MARNE, J.)

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