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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.151 OF 2024

Pramod Ramlal Suryawanshi,
Age 45 Years, Occupation : Driver,
R/o. Neri, Ward No.05, Kondi,
Urjanagar, Chandrapur,
Taluka and District Chandrapur.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Durgapur, Chandrapur,
District Chandrapur – 442 404.

2. Pankaj Ramesh Vatekar,
Age 27 Years, Occupation : Private Job,
R/o. At Nehru Nagar, Chandrapur City,
Taluka and District Chandrapur.

.... RESPONDENTS

Mr. S. P. Bhandarkar, Advocate for appellant.
Mr. Nitin Autkar, APP for respondent No.1/State.
Mr. Jasprit Singh Chilotra, appointed Advocate for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10.04.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

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3. By preferring this appeal, the appellant has challenged the order passed by the learned Additional Sessions Judge, Chandrapur by which the bail application of the present appellant by passing order below Exhibit 17 in Special Case No.18/2023 is rejected on 27.07.2023.

4. The appellant came to be arrested on 08.11.2022 in connection with Crime No.189/2022 registered under Sections 302, 143, 147, 148, 427, 120-B, 212 read with Section 149 of the Indian Penal Code (hereinafter referred to as 'the IPC'), Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 and 45 of the Indian Arms Act and Section 135 of the Maharashtra Police Act.

5. As per the allegation against the co-accused that on 07.11.2022 deceased Mahesh Meshram consumed liquor with his friends namely Lala at Emali Bar and Restaurant, Durgapur and thereafter, while leaving from Restaurant, the deceased was attacked by 6 to 7 persons with deadly weapons due to the prior enmity between them, at the relevant time deceased attempted to save himself and ran towards the car, but all co-accused persons killed him with deadly weapons. The friends of the deceased tried to rescue him, but the car was damaged by the accused persons. As far as the present appellant is concerned,

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the allegation is that he is the relative of the co-accused Sahebrao Maliye. It is alleged that the present appellant took all the accused persons in the car and helped them to screen themselves from the punishment of the offence which they have committed.

6. Heard learned Counsel Mr. Bhandarkar for the appellant who submitted that as far as the allegation against the present appellant is concerned, only to the extent that he took all the assailants in his car to screen themselves from the punishment. In fact, it is the present appellant, who asked them to surrender before the investigating agency and therefore, while returning towards the Chandrapur, the vehicle was intercepted and the other co-accused were arrested. He submitted that as far as the offence which is attracted against the present appellant is under Section 212 of the IPC which is bailable one, even the major offence is punishable with the capital punishment. He submitted that Section 212 of the IPC is for harbouring of an offender. If the offence for which capital punishment is provided or imprisonment for five years and fine which is cognizable offence and bailable. He further submitted that as far as the criminal antecedents are concerned, which cannot be an impediment to release the appellant on bail and placed reliance on the decision of the Hon'ble Apex Court in

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Prabhakar Tewari Vs. State of Uttar Pradesh and another reported in **(2020) 11 SCC 648**, wherein Hon'ble Apex Court held that the factors outlined in Mahipal's case for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima-facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The Hon'ble Apex Court has also considered the factors which can be taken into consideration for granting of bail or cancelling of bail.

7. Learned APP and learned appointed Counsel for the informant strongly opposed the said appeal on the ground that there are various criminal antecedents against the present appellant. Moreover, the manner in which the alleged offence is committed by the co-accused and present appellant has played the role in harbouring the criminals to screen themselves from punishment therefore, the application deserves to be rejected.

8. Having heard the learned Counsel for the appellant and learned APP for the State and learned appointed Counsel for the informant, perused the investigation papers as well as

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recitals of the FIR. Admittedly, the name of the appellant is mentioned in the FIR. After going through the entire charge-sheet with the help of the learned APP and learned Counsel for the appellant, it reveals that the role attributed to the present appellant that after the incident present appellant came along with the other co-accused at the spot of incident and took all the accused persons in his car and thereby, committed an offence punishable under Section 212 of the IPC. On perusal of the provision, it reveals that the punishment is provided for harbouring of the criminal, if the other criminals have committed the offence for which capital punishment is provided i.e. imprisonment upto five years and offence is in the category of bailable offence. With the similar allegation, the co-accused Ajay Dupare was prosecuted who is already on bail by this Court in Criminal Appeal No.488/2023 dated 03.11.2023. It appears from the record that the appellant was not present at the time of the actual incident. Only allegation against him that he took the accused persons in his car after the incident. The CDR reports also shows that there was call between the present appellant and co-accused Sahebrao Maliye. Thus, it appears that on the call made by the co-accused, the present appellant came with the car at said place and took all the accused. Considering the role attributed to the present appellant and the punishment provided and the nature of the offence which committed by the

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present appellant for which punishment upto the five years is provided. There is no dispute as to the fact that the other co-accused have committed the offence which is very grave and serious and in a heinous manner. It is also the part of the record that there are several criminal cases pending against the present appellant. But as observed by the Hon'ble Apex Court that these factors by themselves cannot be the basis for refusal of prayer for bail. The appeal of the present appellant deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

(i) Criminal Appeal is allowed.

(ii) The appellant **Pramod Ramlal Suryawanshi** shall be released on bail in connection with Crime No.189/2022 registered with Durgapur Police Station for the offence punishable under Sections 302, 143, 147, 148, 427, 120-B, 212 read with Section 149 of the Indian Penal Code, Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 and 25 of the Indian Arms Act and Section 135 of the Maharashtra Police Act, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The order dated 27.07.2023 passed by the learned trial Court in Special Case No.18/2023 below Exhibit 17 rejecting the application for bail is hereby quashed and set aside.

(iv) The appellant shall not leave the jurisdiction of Chandrapur District without prior permission of the District Court, Chandrapur.

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(v) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

9. The appeal is disposed of.

10. The fees of the appointed Counsel be quantified as per rules.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.