



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPEAL NO.29 OF 2024

Shivdasan s/o Vijayan Shahu, aged
around 48 years, occupation : labour,
r/o Sumitra Nagar, Chandrapur,
tahsil and district Chandrapur. **Appellant.**

:: VERSUS ::

1. State of Maharashtra, through
Police Station Officer, Police
Station Durgapur, district
Chandrapur.

2. Pankaj s/o Ramesh Watekar, aged
about 27 years, occupation : private service,
r/o Nehru Nagar, Chandrapur
City, tahsil and district
Chandrapur. **Respondents.**

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Shri Akshay Naik, Counsel for the Appellant.
Shri A.Ananthakrishnan, Counsel appointed for R-2.
Shri N.B.Jawade, Additional Public Prosecutor for R-1/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 25/04/2024
PRONOUNCED ON : 30/04/2024

JUDGMENT

1. Heard learned counsel Shri Akshay Naik for the
appellant, learned counsel Shri A.Ananthakrishnan appointed for

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respondent No.2/complainant, and learned Additional Public Prosecutor Shri N.B.Jawade respondent No.1/State. **ADMIT.**
Heard finally by consent.

2. By this appeal, the appellant has challenged order dated 20.12.2023 passed below Exhibit-33 by learned Additional Sessions Judge, Chandrapur in Special Case No.18/2023 whereby the application filed by the appellant for grant of bail has been rejected.

3. The appellant came to be arrested on 11.11.2022 in connection with Crime No.189/2023 registered with Durgapur Police Station, Chandrapur for offences punishable under Sections 143, 147, 148, 120B, 212, 302, and 427 read with 149 of the Indian Penal Code and 4/25 of the Indian Arms Act and 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (the SC ST Act) and 135 of the Maharashtra Police Act.

4. As per allegations against co-accused persons, on 7.11.2022, Mahesh Meshram (deceased) consumed liquor with

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his friend Lala and others at “Imli Bar and Restaurant”, Durgapur and when they were about to leave the Restaurant, the deceased was attacked by 6-7 persons with deadly weapons due to prior enmity between them. At the relevant time, the deceased attempted to save himself and ran towards 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 accused persons.

5. Insofar as the appellant is concerned, allegation against him is that he was a member of the criminal conspiracy, which was hatched by co-accused persons to eliminate the deceased. It is further alleged that the appellant was accused in one crime along with other co-accused. Thus, there is an association of the appellant with co-accused persons.

6. Learned counsel for the appellant submitted that as far as allegation regarding the actual incident is concerned, the appellant is not assailant and his presence was not at the spot of the incident. He inviting my attention to communication of Investigating Officer submitting that the said communication

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shows that till 14.11.2022, there was no reference regarding involvement of the appellant. Though the appellant is shown to be arrested on 11.11.2022, statement of son of the appellant shows that on 7.11.2022 he was taken by the police for interrogation purpose.

He further submitted that motive suggested by the prosecution, that there was a previous enmity and two offences vide Crime Nos.298/2021 and 102/2022 are registered regarding this enmity, does not reveal that the appellant was not accused in both offences.

Crime No.298/2021 was registered against the deceased and others on the basis of report lodged by co-accused Sahebrao Uttamrao Maliye and Crime No.102/2020 is registered on the basis of report lodged by Sagar Pande.

In crime No.298/2021, there is no reference of name of the appellant to show that he was present at the time of the incident, which took place on 15.12.2021.

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As regards Crime No.102/2020, on 10.3.2020, in front of house of the appellant he along with family members of the house was watching performance of children and at that time the deceased came along with his dog and there was hot altercation of words between him and co-accused Bhagirathi Thakur. Said Bhagirathi was assaulted by the deceased and his friends. In said First Information Report no role is attributed to the appellant.

Thus, there is no reason for the appellant to take revenge by entering into conspiracy to eliminate the deceased. Except the statement of the co-accused, there is absolutely no material to connect him with the alleged offence.

He submitted that another co-accused Pramod Suryawanshi is already released on bail by this court and role of the appellant is less grievous than that of the co-accused.

Thus, the appellant is at higher pedestal than the co-accused and, therefore, on the ground of parity also, the appellant be released on bail.

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7. Learned Additional Public Prosecutor for the State strongly opposed contentions of learned counsel for the appellant on ground that there are criminal antecedents against the appellant. The manner in which the alleged offence is committed by the co-accused is heinous in nature and the appellant has played a role in hatching of the conspiracy to eliminate the deceased. As such, the appeal deserves to be dismissed.

8. Having heard learned counsel appearing for respective parties and perused investigation papers, it reveals that the name of the appellant is not mentioned in the First Information Report. After going through the entire chargesheet with the help of learned counsel and Additional Public Prosecutor, it reveals that though the appellant was taken into custody on 7.11.2022 and shown to be arrested on 11.11.2022, till 14.11.2022, none of communications of Investigating Officer shows reference of the appellant. The communication dated 10.11.2022 addressed to the Judicial Magistrate First Class at Chandrapur also nowhere refers involvement of the appellant. The

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communication dated 14.11.2022 to the Judicial Magistrate First Class at Chandrapur, though shows reference of co-accused Pramod Suryawanshi and Ajay, name of the appellant is not mentioned. The only reason which appears to show the name of the appellant is that one crime was registered against the deceased on the basis of report lodged by Sagar Pande which shows that prior to the incident on 10.3.2020 the deceased came in the vicinity of Urjanagar, Durgapur when the appellant along with his family members were watching performance of children and there was altercation of words between the deceased and the deceased abused the appellant and the deceased assaulted co-accused Bhagirathi Thakur. As per the prosecution, to take revenge of this incident, the appellant and other co-accused hatched the conspiracy and eliminated the deceased. To substantiate the said contention, the prosecution relied upon statement of co-accused and CDR. Though learned Additional Public Prosecutor for the State has referred connection between co-accused Sahebrao Maliye and the appellant, statement of said Maliye nowhere refers the name of the appellant. It is the case of the prosecution that the appellant and co-accused Maliye are

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friends and, therefore, telephonic communication between them cannot be treated as an incriminating circumstance against the appellant.

9. Learned counsel for the appellant rightly placed reliance on the decision of the Honourable Apex Court in the case of **P.K.Narayanan vs. State of Kerala**¹ wherein it is observed that the ingredients of this offence are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal and, therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available.

10. Admittedly, direct evidence would not be available to prove the conspiracy, but there should be at least some evidence

¹ (1955)1 SCC 142

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to show involvement of the appellant in the said conspiracy, which is absent in the present case.

11. While considering applications for bail, factors need to be considered are, gravity of offence, punishment provided for the offence, nature of offence, and availability of accused for trial if he is released on bail.

12. There is no doubt that the alleged offence committed by co-accused persons is heinous in nature.

13. As far as the appellant is concerned, the material available on record does not justify to arrive at a conclusion that the appellant was part of the conspiracy. The offence alleged is no doubt grave and serious and several criminal cases are pending against the appellant. These factors itself are not sufficient to deprive him from liberty.

The Honourable Apex Court in the case of **Prabhakar Tewari vs. State of Uttar Pradesh and anr²** held that these factors by themselves cannot be the basis for refusal for prayer for bail.

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14. In view of the observation, the appeal deserves to be allowed. The prayer of the appellant requires to be considered on the ground of parity also as co-accused person is released on bail. The role of the co-accused was more serious, but considering the evidence in the nature of CDR against him, he was released on bail. The case of the appellant is on higher pedestal than the co-accused.

15. In the light of the above, as the appeal deserves to be allowed, following order is passed:

ORDER

(1) The criminal appeal is **allowed**.

(2) The appellant be released on bail on his executing a PR.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount in connection with Crime No.189/2023 registered with Durgapur Police Station, Chandrapur for offences punishable under Sections 143, 147, 148, 120B, 212, 302, and 427 read with 149 of the Indian Penal Code and 4/25 of the Indian Arms Act and 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled

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Tribe (Prevention of Atrocities) Act, 1989 and 135 of the Maharashtra Police Act.

(3) The appellant shall not enter into the jurisdiction of the Chandrapur district, till culmination of the trial, except on dates on which proceedings are kept by the trial court.

(4) The appellant shall not induce or threat or promise to any of witnesses connected with the crime in question and shall not tamper the prosecution evidence.

(5) Fees of learned counsel Shri A.Ananthakrishnan appointed for respondent No.2/complainant be quantified and the same be paid to him as per rules.

With this, the appeal stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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