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

CRIMINAL APPEAL NO.53 OF 2024

Ajazkhan Shahzadkhan Pathan,
Aged about 45 Years,
Occupation: Labourer,
R/o Goregaon, Taluka Sindkhed Raja,
District Buldhana.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Sakharkherda,
Taluka Sindkhed Raja and
District Buldhana.
2. Smt. Tulsabai w/o Rooplal Kavhale,
Aged about 65 Years,
R/w. Goregaon,
Taluka, Sindkhed Raja,
District Buldhana.

.... RESPONDENTS

Mr. Anil Mardikar, Senior Counsel a/b Mr. Digvijay Prakash
Singh, Counsel for the appellant.
Mr. C. A. Lokhande, APP for respondent No.1/State.
Ms. Radha M. Mishra, appointed Advocate for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07.08.2024

ORAL JUDGMENT :

1. Heard.
2. **Admit.**

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3. Present appeal is preferred by the appellant against the order dated 30.10.2023 passed by the learned Special Judge, Mehkar, District Buldhana in Bail Application in Special Atrocity Case No.26/2022 below Exhibit 28.

4. The appellant came to be arrested on 16.03.2022 in connection with Crime No.60/2022 registered with Police Station, Sakharkherda, District Buldhana for the offences punishable under Sections 302, 120-B of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. The crime is registered on the basis of report lodged by mother of the deceased namely Tulsabai Rooplal Kavhale on an allegation that the deceased was her son and he was married with one Mira Dattatraya Kavhale. There was illicit relationship between the wife of the deceased and the present applicant and thereafter, deceased has sent his wife at her parents house. However, she was again dropped at their house and she was given understanding. On 15.03.2022 at about 12.30 to 1.00 p.m. she had been to the house of her son, at the relevant time, she has seen the

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present applicant running away from the house of her son. She entered in the house and she saw that her son was lying on the bed, his legs were tied by the handkerchief and his face was covered. When she went near to her son, her daughter-in-law disclosed that as deceased is not well and therefore, he is sleeping and not to disturb him. Therefore, she left the house and went to her house thereafter, after two hours, her daughter-in-law disclosed by telephonic call that her husband – deceased Dattatraya is no more. Therefore, she suspected that as her daughter-in-law and the present applicant were having illicit relations, they both have committed the murder of the deceased. On the basis of the said report, police have registered the crime against the present appellant.

6. After registration of the crime, the appellant was arrested and he filed bail application before the learned Special Court. The learned Special Court has considered the material collected during the investigation and observed that the report and the statement of the witnesses *prima facie* supported the case of the prosecution and observed that *prima facie* case is made out against the present appellant and rejected the bail application.

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7. Being aggrieved and dissatisfied with the same, the present appeal is preferred by the appellant on the ground that the entire case is based on the circumstantial evidence. The learned Special Court has ignored the material aspect that the entire case is based on the extra judicial confession of the co-accused which is very weak type of evidence. There is no other material collected during the investigation to show the connection of the present appellant with the alleged crime.

8. Heard learned Senior Counsel Mr. Mardikar for the appellant. He submitted that initially merg was registered by the investigating agency. The enquiry was also conducted in the merg, but the statements which are recorded during the enquiry of the merg are not placed on record. He further invited my attention towards the facts that the FIR is lodged on 16.03.2022 prior to that merg was registered and enquiry was conducted. At the relevant time, the informant has not disclosed that she has seen the present appellant running from the spot of incident. Subsequently, afterthought on the next day, the FIR was lodged. If this would have been fact that she had witnessed the present appellant running from the spot of incident,

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there ought to have the immediate disclosure by the informant. The delay in lodging the FIR is not explained by the informant. He further submitted that though the investigating agency has collected the mobile phone which was seized from the co-accused Mira Dattatraya Kavhale and transcription of the communication was placed on record, but from the said communication, at the most it can be revealed that there was relationship between both of them. As far as the elimination of the deceased is concerned, this evidence is also not sufficient to connect the present appellant with the alleged offence. He submitted that now, the investigation is completed and charge-sheet is filed. The entire case is based on circumstantial evidence and the chain of the circumstantial evidence is not completed. Considering that the appellant is behind bar since 16.03.2022 and there is no progress in the trial. The appellant be released on bail.

9. The learned APP strongly opposed the said appeal on the ground that there was illicit relationship between the wife of the deceased and the present appellant and the deceased was hurdle in the said relationship therefore, they both have eliminated him. He submitted that though case

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is based on the circumstantial evidence, but the statement of the informant and the extra judicial confession sufficiently shows the involvement of the present appellant. If the appellant is released on bail, he would tamper with the prosecution evidence. In view of that, the appeal deserves to be dismissed by maintaining the order passed by the learned Special Judge.

10. Learned appointed Counsel for the respondent No.2 also endorsed the same contention and submitted that the evidence which in the nature of circumstance is sufficient to connect the present appellant with the alleged offence. In view of that, appeal is devoid of merits and liable to be dismissed.

11. After hearing the learned Senior Counsel for the appellant and learned APP as well as learned appointed Counsel for the respondent No.2, perused the entire investigation papers from which it reveals that the alleged incident has occurred on 15.03.2022 at about 12.30 to 1.00 p.m. At the relevant time, the informant has seen her son in a condition that his legs were tied by the handkerchief. As per the statement of the informant, she has also seen

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the present appellant running from the house of the deceased. Though she was aware that there was illicit relationship between the present appellant and the wife of the deceased, she has not made any grievances during the enquiry of the merg. From the endorsement in the FIR at Column 8 sufficiently shows that enquiry was conducted in the merg and therefore, report was lodged belatedly. The statements which are recorded or the enquiry conducted by the concerned Inquiry Officer in respect of the merg is not placed on record. The FIR is lodged on 16.03.2022 at about 1.24 p.m. Thus, delay in lodging FIR is not explained by the informant. Moreover, there is delay in disclosing the name of the assailants also. As far as the involvement of the present appellant is concerned, admittedly there is no direct evidence to connect him with the alleged offence. Merely on the basis of the statement of the witnesses that there was an illicit relationship between both of them and there was a telephonic communication between the wife of the deceased and the present appellant. He was shown to be accused in the alleged incident. The extra judicial confession admittedly is a weak type of evidence. At this stage, considering the material collected during the investigation

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and the delay in lodging the FIR, moreover, the appellant is behind bar since 16.03.2022 and there is no progress in the trial.

12. In the light of the above facts and circumstances, the appellant has made out a case for grant of bail. Admittedly the evaluation of the evidence at this stage is not required but considering the entire case is rested on the circumstantial evidence and the apprehension of the State can be taken care of by imposing certain conditions on the present appellant. The appeal deserves to be allowed. Accordingly I proceed to pass following order.

ORDER

(i) The appeal is allowed.

(ii) The order dated 30.10.2023 passed by the learned Special Judge, Mehkar, District Buldhana in Bail Application in Special Atrocity Case No.26/2022 below order Exh.28, is hereby quashed and set aside.

(iii) The appellant **Ajazkhan Shahzadkhan Pathan** shall be released on bail on executing PR bond of Rs.25,000/- with one solvent surety in the like amount, in connection with Crime No.60/2022 registered with Police Station, Sakharkherda, District Buldhana for the offences punishable under Sections 302, 120-B of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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(iv) The appellant shall not enter into the vicinity of the village Goregaon, District Buldhana, till culmination of the trial.

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

(vi) The appellant shall attend the proceeding before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

13. The appeal is disposed of.

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

(URMIL A JOSHI-PHALKE, J.)

Sarkate.