



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

CRIMINAL APPEAL NO.69 OF 2024

1. Shyamrao Chandraya Mogilwar,
Aged 24 years, Occupation – Farmer,
2. Gattu Ankalu Mogilwar,
Aged 37 years, Occupation – Labour,
All R/o. Mohurli, Tq. Mulchera,
District Gadchiroli

...APPELLANTS

VERSUS

1. State of Maharashtra,
through Police Station Officer,
P.S. Mulchera, Tq. Mulchera,
District Gadchiroli
2. Antkala Ramdas Ahlam
R/o. Mohurli, Tq. Mulchera,
District Gadchiroli

...RESPONDENTS

Mr. S.V. Sirpurkar, Advocate for the appellants.
Ms S. Kolhe, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MAY 2, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel
for the parties.

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellants have challenged the order dated 05/01/2024 rejected the bail application of the appellants by the Additional Sessions Judge, Aheri in Sessions Trial No.152/2023.

3. The appellants are arrested on 15/10/2023 in connection with Crime No.72/2023 registered at police station Mulchera, District Gadchiroli for the offence punishable under Section 302, 201, 143, 120-B read with Section 149 of the Indian Penal Code and Section 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

4. As per the prosecution incident occurred on 17/09/2023 and the police recovered the body of the deceased on 18/09/2023 from sewage of Devnagar road bridge. Later on FIR was lodged after almost a month on 14/10/2023. On the basis of secret information, the FIR came to be lodged on 14/10/2023 and accused persons are arrested. It is alleged that the informant Deepali Ravindra Kamble has conducted the inquiry and during inquiry she has recorded the statement of wife of the deceased. It revealed from her statement that on 17/09/2023 when she was present in the house at that time at about 12:30 to 1:00 p.m. one

Kavita Santosh Mongilwar came to her house and abused her husband by saying that why he has committed the theft of liquor from her house and also assaulted him by wooden stick on his hands and legs. On her intervention, she disclosed that the husband of the Antkala Alam has committed the theft at her house and also threatened her that she will kill her husband and thereafter she left the house along with Santosh Mongilwar and others. As she raised the suspicion about the death of her husband that he was assaulted by Santosh Mongilwar and others, and therefore, his death is caused. During inquiry, the suspect Sharad Girmaji Madavi was taken into custody and his statement was recorded from which it revealed that when deceased had been to consume the liquor at Santosh Mongilwar's house, at that time he was taken inside the house and was assaulted and thereafter present appellants and other co-accused carried him on the motorcycle and left them on the place, thereafter his dead body was recovered. On the basis of said report, police have registered the crime against the present applicant and other co-accused.

5. After registration of the crime and after arrest of the accused, present appellants have filed the application before the Special Court for grant of bail but the same was rejected on the ground that the

offence alleged against them is grievous in nature and there is sufficient material.

6. Being aggrieved with the same, present appeal is preferred by the appellants for grant of bail.

7. Learned Counsel for the appellants submitted that except the statement of the co-accused there is absolutely no material against the present appellants to connect them with the alleged offence. He submitted that even the statement of the co-accused is taken into consideration only role attributed to the present appellants is that after the incident, the deceased was lifted by the present appellant and carried at some place and thereafter he was dropped at that place. He submitted that considering the statement of Sharad Girmaji Madavi also there is no allegation that it is the present appellants who have assaulted the deceased, and therefore, no *prima facie* case is made out against the present appellants, their further incarceration is not required. In view of that, they be released on bail.

8. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 strongly opposed the appeal on the ground that besides the statement of the co-accused there is extra judicial confession by the said Madavi from which it reveals that present appellants were

also present in the house when the deceased was assaulted and thereafter he was taken on the vehicle and the dead body of the deceased was found floating in the water. Thus, present appellants have caused the death of the deceased. Considering the gravity of the offence and the involvement of the present appellants, the bail application deserves to be rejected.

9. I have heard learned Counsel for both the parties. Perused the entire investigation papers. Initially after the dead body of the deceased was found, the statement of the wife of the deceased was recorded wherein she has not raised any suspicion against anybody about the death of the deceased. On the contrary, she stated that her husband was in habit of consuming the liquor, and therefore, his dead body appears to be found floating in the water. She has not raised any suspicion about the involvement of any of the accused in the alleged incident. The postmortem report also shows that death of the deceased is due to the drowning. Thereafter inquiry was conducted and during inquiry statement of wife of the deceased is again recorded wherein she has narrated that on the day of incident i.e. on 17/09/2023 one Kavita and Santosh Mongilwar came to her house and assaulted her husband and threatened them. During the inquiry, the statement of the co-accused Sharad Madavi was also recorded from which the

involvement of the present appellants revealed. As per the prosecution, said Sharad Madavi has given an extra judicial confession and from which also the involvement of the present appellants revealed. As far as the nature of the evidence at extra judicial confession is concerned which is very weak type of evidence and unless it is corroborated by the other circumstances it cannot be acted upon. Moreover, the extra judicial confession should be in the exact words narrated by the person who has give the statement. At this stage, considering the fact that the involvement of the present appellants is only on the basis of the statement of the co-accused and there is no other material to connect the present appellants with the alleged offence, they have made out the case for grant of bail. Hence, the appeal deserves to be allowed. In view of that, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The order dated 05/01/2024 passed by the Additional Sessions Judge, Aheri in Sessions Trial No.152/2023 is hereby quashed and set aside.
- (iii) The appellants – 1) Shyamrao Chandraya Mogilwar and 2) Gattu Ankalu Mogilwar in connection with Crime No.72/2023 registered at police station Mulchera, District Gadchiroli for the offence punishable under Section 302,

201, 143, 120-B read with Section 149 of the Indian Penal Code and Section 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- each with one solvent surety each, in the like amount.

(iv) The appellants shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

(v) The appellant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(viii) Contravention of any of the conditions would lead to cancellation of bail.

10. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)