



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

CRIMINAL APPEAL NO. 103 OF 2024

APPELLANT:
(IN JAIL)

Gopichand Sampat Shivarkar,
Aged about 30 years, Occu: Labour,
R/o Amboli, Tah. Chimur,
District Chandrapur.

...V E R S U S...

RESPONDENTS

- 1] State of Maharashtra, through
Police Station Officer, Police Station Bhisi,
Tah. Chimur, District Chandrapur.
- 2] Mohan s/o Dayaram Wagh,
Aged about 26 years, Occu: Labour,
R/o Amboli, Tah. Chimur,
District Chandrapur.

Mr. D.V. Mahajan, counsel for appellant.

Ms. Shamshi Haider, APP for Respondent No.1.

Ms. F.N. Haidari, counsel (appointed) for respondent No.2.

CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **08/05/2024**

ORAL JUDGMENT :

1. **Admit.** Heard finally with the consent of learned
counsel appearing for the parties.

2. By preferring this appeal, the appellant has
challenged the order passed by the Additional Sessions Judge,
Warora in Special (Atro.) Case No. 37/2023 below Exhibit No.5,

rejecting the application filed by the present appellant for bail.

3. The accusation against the present appellant is on the basis of report lodged by the son of the deceased Mohan Dayaram Wagh alleging that there was a previous dispute between the present applicant and him. On the day of the incident i.e. 16/06/2023 at about 6.00 a.m., he had been to Borda and returned at about 6.30 p.m., at the relevant time, his mother was sitting in the Courtyard and he was doing some work in the courtyard, at that time, at about 7.30 p.m., the present applicant by hiding himself came in his courtyard, holding the wooden log in his hand and gave a blow of the said wooden log on the head of his mother. Due to the said blow, his mother sustained the grievous injury and succumbed to the death. On the basis of the said report, the police have registered the crime against the present appellant. As per the allegation, at the relevant time, after hearing the shout, his neighbor Sunil Nannaware also came there, and being he was scared, he hid himself in the house of another neighbor. After registration of the crime, the appellant approached to the Special Court for grant of bail, but considering the prima-facie case against the present appellant, the bail application is rejected.

4. Learned counsel Mr. D.V. Mahajan for the appellant

submitted that as far as the allegations are concerned, it is a case of single blow. Due to provocation at the hands of the deceased, the appellant has given a blow on her head. Now, investigation is already completed and charge-sheet is already filed, further incarceration of the present appellant is not required, therefore, he be released on bail.

5. Learned APP and learned appointed counsel strongly opposed the said application on the ground that there was neither a provocation nor it is a sudden fight or sudden quarrel, but with an intention to eliminate the deceased, the present appellant came in the courtyard along with a stick and gave a blow from the backside, due to which the deceased who was an old lady succumbed to the death. Thus, the intention of the present appellant reveals from the recitals of the FIR and the statements of the witnesses. During the investigation, the statement of said Sunil Raghoji Nannaware is also recorded, who also stated that after hearing the shouts of the deceased, he came in the courtyard and saw that he was assaulted by the present appellant and the appellant was seen by him running from the said place, holding the stick in his hand. Thus, prima-facie case is made out against the present appellant. The case doesn't covered under any of the

exceptions i.e. Exception 1 or Exception 4 of Section 300 of the Indian Penal Code, 1860. She submitted that considering the prima-facie case against the present appellant, the bail application is rejected by the learned trial Court and no interference is called for.

6. Having heard learned counsel for the appellant, learned APP for the State and learned appointed counsel for the respondent No.2, perused the recitals of the FIR as well as the various statement of the witnesses. There is no dispute as to the fact that the deceased has sustained a single injury on the head which proves to be fatal, and the death of the deceased is caused. As far as the submission of the learned counsel for the appellant is concerned, that there was a provocation and in that provocation, the present appellant has given a blow on the head of the deceased is not supported by any of the material collected during the investigation or any statement of the witnesses. On the contrary, the recitals of the FIR and the statements of the witnesses, nowhere shows either there was any quarrel on the day of the incident between the deceased or the family members of the deceased and the present appellant. So, the contention regarding the provocation is not supported by any evidence on record. As far

as the sudden fight and sudden quarrel is concerned, there is no statement to that effect that on the day of the incident, there was a quarrel between the deceased or the family members of the deceased and the present appellant. On the contrary, the statement of the witnesses shows that it was the present appellant who came in the courtyard along with the weapon in his hand i.e. after preparation and eliminated the deceased.

7. Considering the prima-facie material against the present appellant, the learned trial Court has rightly considered the case and the case does not cover any exception, and rejected the bail application.

8. In view of the above facts and circumstances, I do not find any reasons to interfere with the said finding, the appeal is devoid of merits and liable to be dismissed. Accordingly, I proceed to pass the following order:

ORDER

- a) The criminal appeal No. 103/2024 is dismissed.
- b) The fees of the appointed counsel be quantified as per the Rule.

[URMILA JOSHI-PHALKE, J.]