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

CRIMINAL APPEAL NO.112 OF 2024

Ganesh @ Babbu s/o Vishwanath
Shivankar, Age 55 Years,
Occupation : Carpenter,
R/o Plot No.48, Near Mahesh Atta
Chakki, Hajaripahad, Gittikhadan,
Nagpur.
(At present Central Jail, Nagpur)

.... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Gittikhadan Nagpur.
(Vide Crime No.650/2022)
Investigating Officer Assistant
Commissioner of Police, Sadar
Division, Nagpur City, Nagpur.
2. Vaishali w/o Pravin Salve,
Age 36 Years, Occupation : Labour,
R/o Hazaripahad Behand Mahesh
Flour Mill, Near Bus Stop, Nagpur.
(Complainant)

.... RESPONDENTS

Mr. A. K. Bhangde, Advocate for appellant.
Mr. H. R. Dhumale, APP for respondent No.1/State.
Ms. Archana P. Murrey, appointed Advocate for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26.04.2024

ORAL JUDGMENT :

1. Heard.

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2. **Admit.**

3. By preferring this appeal, the appellant has challenged the order passed by the learned Additional Sessions Judge – 9 and Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Nagpur, by which the application below Exhibit 3 for grant of bail is rejected vide order dated 20.01.2021.

4. The accusation against the present appellant is on the basis of report lodged by Vaishali Pravin Salve on an allegation that on 09.11.2022 at about 9.00 p.m. the brother of the informant had come to his house. She had given tiffin and son of the informant Manthan Salve went to the house of his grandfather. At about 9.30 p.m., her son rushed to the house and disclosed that there was a quarrel between the present appellant and the deceased Umesh Dhurve. It is further alleged that during that scuffle, the Bamboo stick which was lying at the spot was picked up by the present appellant and gave a blow of that stick on the head of the deceased, due to which, the deceased sustained injury and succumbed to the death. On the basis of the said report, police have registered the crime against the present appellant. After registration of the crime, the appellant approached the learned Special Court for grant of bail. The learned Special Court considered the entire material and

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held that there is a *prima facie* material against the present appellant in the nature of the statement of the eye witnesses which shows the involvement of the present appellant and rejected the bail application.

5. Being aggrieved and dissatisfied with the said order, the present appeal is preferred by the appellant on the ground that the learned Special Court failed to consider that the entire incident occurred in a sudden fight and sudden quarrel. There was no preparation to commit such an offence, therefore intention cannot be attributed to the present appellant. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required and therefore, application deserves to be allowed.

6. Learned Counsel Mr. Bhangde, for the appellant endorsed the same contention and submitted that at the most the offence alleged covers under Section 304 part II of the Indian Penal Code and prayed for releasing him on bail.

7. Learned APP and learned Counsel for the respondent No.2 – informant strongly opposed the said application on the ground that there was previous enmity between the present appellant and the deceased, due to which deceased was assaulted by the present appellant. The intention of the present appellant can be gathered from the circumstance that the blow

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was dealt on the head and the deceased died due to the head injury. In view of that, the appeal 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 respondent No.2 - informant, perused the recitals of the FIR as well as the statements of the eye witnesses. The cause of death of the deceased is due to the head injury. On perusal of the statement of the eye witnesses, it reveals that the quarrel was started between the present appellant and the deceased on account of the construction of the house. It is apparent from the statement that suddenly quarrel was started as the deceased visited the site and initially, abuses were there by the present appellant and the present appellant has picked up the Bamboo stick which was lying at the spot and gave a blow on the head of the deceased, due to which deceased sustained the injury. Thus, it is apparent that there was no preparation to commit such an offence, but during the sudden fight and sudden quarrel this alleged incident has taken place and the blow was given on the head of the deceased. Thus, the case of the present appellant squarely covers under the exception of sudden fight and sudden quarrel. Now, the investigation is already completed and charge-sheet is filed, further incarceration of the present appellant is not required. Learned trial Court has not considered

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this aspect, while rejecting the bail application. In view of that, the observation of the learned trial Court deserves to be quashed and set aside. Accordingly, I proceed to pass following order.

ORDER

(i) The Criminal Appeal is allowed.

(ii) The appellant **Ganesh @ Babbu s/o Vishwanath Shivankar** shall be released on bail in connection with Crime No.650/2022 registered with Police Station Gittikhadan, Nagpur for the offence punishable under Section 302 of the Indian Penal Code and under Sections 3(1)(r)(s), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, on executing PR bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.

(iii) The order dated 20.01.2024 passed by the learned Special Court rejecting the bail application in Special Case No.4/2023 below Exhibit 3, is hereby quashed and set aside.

(iv) The appellant shall not enter into the vicinity of Hajaripahad, till culmination of the trial.

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

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

10. The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)