



(1)

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

**CRIMINAL APPEAL NO.201 OF 2024**

Santosh s/o Namdeo Raut,  
Aged about 45 Years,  
Occupation : Labourer,  
R/o. Ambedkar Ward, Ward No.1,  
Arvi, Tahsil Arvi, District Wardha.  
(Wardha Prison)  
Through Legal Aid.

**..... APPELLANT**

**// VERSUS //**

1. The State of Maharashtra,  
Through Police Station Officer,  
Police Station, Arvi,  
Tahsil Arvi, District Wardha.
2. Rahul Gyaneshwar Wahane,  
Aged about 31 Years,  
Occupation : Business,  
R/o. Ambedkar Ward,  
Wardha Road, Arvi,  
District Wardha.

**.... RESPONDENTS**

-----  
Mr. Abhishek S. Shukla, appointed Advocate for appellant.  
Mr. K. R. Lule, APP for respondent No.1/State.  
Ms. C. S. Bhute, appointed Advocate for respondent  
No.2.  
-----

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 04.07.2024**

**ORAL JUDGMENT :**

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

(2)

3. By preferring this appeal, the appellant has challenged the order dated 17.08.2023 passed by the learned Special Judge, Wardha in Miscellaneous Criminal Bail Application No.376/2023 by which, the application of the present appellant for grant of bail is rejected.

4. The facts of the prosecution case in nutshell are as under:

The appellant came to be arrested on 21.05.2022 in connection with Crime No.429/2022 registered under Sections 302 and 307 read with Section 34 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The informant who is the brother of the deceased has lodged report on 21.05.2022 that he along with his father Dnyaneshwar and the deceased was residing prior to some days his brother met with an accident, due to the speed breaker, when he was travelling on his motorcycle. For the said accident, he was treated in medical college and he has sustained the serious injuries on his head, due to which he has to undergo an operation. It is further alleged that on 18.05.2022 at about 9.00 a.m. when he woke up in the morning, his brother was at house and thereafter, when

(3)

he returned back at that time also his brother was sleeping. Thereafter, he came to know that his brother admitted to the hospital at Arvi. He immediately rushed to the hospital. He subsequently, came to know that his brother was assaulted by the present appellant and the other co-accused. During treatment, his brother succumbed to the death. On the basis of the said report, police have registered the crime against the present appellant.

5. During the investigation, one eye witness namely Rajendra Madhukarrao Tayawade came forward to disclose that on 17.05.2022 at about 12 a.m., in the midnight, he was sleeping in the courtyard of his house. At the relevant time, he witnessed the quarrel between the deceased and the present appellant. The present appellant and other co-accused were abusing the deceased and thereafter, assaulted him by means of fist and kick blows. Due to which, the deceased fell on the ground and sustained the injuries on his head thereafter, he was shifted to the hospital, but on taking treatment, he was succumbed to the death. On the basis of information, police have registered the offence against the present appellant as well as other co-accused.

(4)

6. It is submitted by the learned Counsel for the appellant that the application for bail is filed on two grounds one is medical ground as the appellant is suffering from mouth Cancer and initially, he was operated and also chemotherapy was given to him, but now again he is in need of biopsy. He is unable to open his mouth and therefore, he is on liquid food. It is further submitted that the jail report also shows that he is on a liquid diet and palliative care is needed which is not possible inside District Jail Wardha.

7. Learned Counsel for the appellant submitted that on the ground of medical also the appellant requires to be released on bail as no possible treatment is available with the Prison Authority. He submitted that on merits also the entire case rested on the evidence of the eye witness i.e. Rajendra Madhukarrao Tayawade, who initially has made a general allegation against the present appellant and in the statement under Section 164 of the Code of Criminal Procedure, he completely left the loyalty to the prosecution and has not assigned any role to the present appellant. Considering the case on merits also, no case is made out against the present appellant to attract the provision under

Section 302 of the Indian Penal Code. The cause of death of the deceased is also not known to the prosecution. In the light of the above circumstances, the appellant be released on bail.

8. As far as the medical ground is concerned, learned Counsel placed reliance on **Naresh Goyal Vs. Directors of Enforcement and another** reported in **2024 SCC OnLine Bom 1259**, **Vijay Agrawal through Parokar vs. Directorate of Enforcement** reported in **2022 SCC OnLine Del 4494** and on delay in trial he placed reliance **Union of India Vs. K.A. Najeed** reported in **(2021) 3 SCC 713**.

9. Learned APP strongly opposed the said application on the ground that the offence alleged against the present appellant is of a serious nature. Considering the gravity of the offence and the appellant is already receiving treatment by the Jail Authority, in view of that, the application deserves to be rejected. He further submitted that the jail report itself shows that prisoner has refused for Biopsy to confirm recurrence of growth. Thus, unless and until that

(6)

biopsy is carried out, the appellant shall not be released on interim bail on the medical ground.

10. Learned Counsel for the respondent No.2 has also endorsed the same contention and submitted that application deserves to be rejected.

11. After hearing the learned Counsel for the appellant and after going through the investigation papers, it reveals that the quarrel between the deceased and present appellant and another co-accused was during the sudden fight and sudden quarrel. In the said quarrel, the deceased was assaulted by fist and kick blows. Admittedly, no weapon was used by any of the accused during this scuffle and immediately the deceased was taken into hospital, but during treatment, he succumbed to the death. The prosecution case itself shows that initially also deceased met with an accident and suffer head injury which grievous in nature. The postmortem report also not discloses that death of deceased is due to the injury sustained in the said scuffle.

12. On the medical grounds also the Prison report shows that prisoner i.e. appellant is suffering from Gingivo

Buccal Mucosa Right side and Biopsy is suggested to him. The report further discloses that at present prisoner needs to get evaluated for recurrence of disease as he is unable to open mouth. At present he is on liquid diet only and palliative care is needed which is not possible inside District Jail. The initial treatment papers also shows that deceased was suffering from this Buccal Mucosa which is in other words the Cancer of a mouth. The scan report is also on record which also shows that case of carcinoma right lower gingivo-buccal sulcus, post operative, followed by chemo- radiotherapy, now complains of food regurgitation, scan done for present disease status evaluation. Thus, it is apparent that the day by day the health of the present appellant is deteriorating.

13. The learned Counsel for the appellant placed reliance on the decision of **Naresh Goyal** (supra) wherein at the Principal Seat by referring the decisions of the Apex Court it is observed that evidently, the Parliament has used the words, 'sick' or 'infirm' disjunctively. A person may be sick and infirm. A person can be 'infirm' without being 'sick'. However, it is not every kind of sickness which would justify the grant of bail lest the object behind prescribing

stringent conditions in the matter of grant of bail would be frustrated if a person can be released on bail on the ground of sickness *dehors* the degree of seriousness of the ailment. It is in this context, the reports of the experts assist the Court in forming an opinion as to whether the person claiming bail is suffering from such sickness as to warrant his release on bail.

14. In para No.14 it is further observed that the consideration that the sickness is such that it cannot be adequately or effectively treated in the prison hospital/the medical facility attached to the prison or Government hospital, weighs with the Court. The degree of sickness also bears upon the exercise of discretion. If it is a life threatening disease, the Court would be well advised to exercise its discretion. Conversely, it cannot be said that the proviso cannot be resorted to in the case of sickness which is not life threatening. Essentially, the question of sickness, or for that matter infirmity, is rooted in the thickets of facts of the given case.

15. In the light of the above observations, if the facts of the present case are taken into consideration admittedly,

(9)

the appellant is suffering from a disease which needs a special treatment and the Jail Authorities have already shown their inability to provide such treatment to the present appellant. In view of that, learned trial Court ought to have considered the bail application on the medical ground. The learned Special Court has not paid any heed towards it and rejected the application.

16. Considering the ground raised by the present appellant who is suffering from a Cancer and his health is deteriorating day by day, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

### **ORDER**

(i) The appeal is allowed.

(ii) The order dated 17.08.2023 passed by the learned Special Judge, Wardha in Miscellaneous Criminal Bail Application No.376/2023 is quashed and set aside.

(iii) The appellant **Santosh s/o Namdeo Raut** shall be released on bail in connection with Crime No.429/2022 registered under Sections 302 and 307 read with Section 34 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(10)

(iv) The appellant shall undergo the treatment at Government Medical College Nagpur as well as at Wardha and he shall periodically submit his medical report before the learned Special Court regarding the progress in his medical treatment.

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

(vi) The appellant shall attend the proceeding before the learned trial Court on a scheduled date and request for exemption whenever it is required. The trial Court shall consider his exemption application appropriately.

17. The fees of the appointed Counsel for the respondent No.2 be quantified as per rules.

18. The appeal is disposed of.

**(URMIL A JOSHI-PHALKE, J.)**