



Judgment

275 apeal245.24

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

CRIMINAL APPEAL NO.245 OF 2024

Virendra @ Viru Ashok Kolhe,
age: 31 years, occupation labour,
r/o Mahatma Fule Society, Waghapur,
Yavatmal, taluka / district Yavatmal. **Appellant.**

:: V E R S U S ::

1. The State of Maharashtra,
through Police Station
Officer, Lohara, Yavatmal.

2. Aakash Pundlik Wankhede,
aged about 28 years,
r/o Netaji Nagar, Yavatmal,
taluka and district Yavatmal. **Respondents.**

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Shri S.V.Sirpurkar, Counsel for the Appellant.
Shri K.R.Lule, Additional Public Prosecutor for Respondent
No.1/State.
Mrs.Kirti Deshpande, Counsel Appointed for Respondent
No.2/Complainant.
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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 20/08/2024

PRONOUNCED ON : 23/08/2024

JUDGMENT

1. By this appeal under Section 14-A of The Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities)
Act, 1989 (SC & ST Act), the appellant (accused)

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challenges order dated 27.2.2024 passed below Exhibit-343 by learned Judge, Special Court, Yavatmal in Special Case No.29/2020 whereby application, moved by the accused for grant of regular bail for offences under Sections 143, 147, 149, 302, and 307 of the Indian Penal Code and 25 and 4 of the Arms Act and 135 of the Bombay Police Act, came to be rejected.

2. Heard learned counsel Shri S.V.Sirpurkar for the accused, learned counsel Mrs.Kirti Deshpande for respondent No.2 (the complainant), and learned Additional Public Prosecutor Shri K.R.Lule for respondent No.1 (State).

3. **Admit.**

4. The accused came to be arrested on 7.2.2021 and since then he is in jail.

5. The crime is registered on the basis of report lodged by Aakash Pundlik Wankhade (the complainant) on an allegation that the accused and other co-accused persons, on account of old rivalry, assaulted Vinay Khushal Rathod (the deceased) who was acquainted to the complainant. When the complainant intervened in the quarrel, he was also assaulted

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by a knife. On the basis of the said report, the police registered the crime against the accused and other co-accused persons.

6. Learned counsel for the accused submitted that other co-accused persons to whom similar role is attributed are already released on bail by this court as well as by the Sessions Court. Thus, on the ground of parity, the accused be released on bail. He further submitted that the accused is behind the bars since the date of his arrest i.e. from 7.2.2021 and there is no progress in the trial. On merits also, general allegation is made against the accused. He placed reliance on order passed by the Division Bench of this Court in Criminal Appeal No.291/2023 (**Prasanna @ Dau Pramod Meshram vs. The State of Mah., thr.PSO PS Lohara, Yavatmal and anr**) decided on 28.6.2023 wherein the appellant is released on bail. He further placed reliance orders dated 29.4.2023, 2.8.2023, and 1.3.2023 passed by learned Additional Sessions Judge, Yavatmal wherein other co-accused Rahul Sanjay Shinde, Devanand Pralhad Kalvate, and Sahil Sheikh and Rafik Sheikh are released on bail. He submitted that now, investigation into the crime is already completed and chargesheet is already filed. Further incarceration of the

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accused in jail is not required. In view of that, the appeal be allowed and the accused be released on bail.

7. *Per contra*, learned Additional Public Prosecutor for the State and learned counsel for the complainant opposed the appeal on ground that the entire incident started at the behest of the accused. Statements of eyewitnesses show that on 10.12.2019, at about 11:00 am, when the complainant had been to Nandurkar School, the accused and co-accused Dau and Prasanna Meshram met him and asked for mobile number of the deceased. He exchanged mobile number to them and, thereafter, the accused disclosed to him that the deceased is possessing mobile of one Durgesh and he should return it back. At about 4:00 pm, Vinay Rathod called him at "Waghapur Tekdi Square" and, therefore, he went there. At the relevant time, the accused and other co-accused persons were communicating with the deceased. During the communication, the accused took out a knife and pierced it into abdomen of the deceased and, thereafter, other co-accused persons have also given blows on the person of the deceased. When the complainant caught hold the accused, other co-accused gave a blow of knife on his back. On his shouts, other persons gathered there. On the basis of the

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report lodged, the police registered the crime. It is submitted that the ground of parity is not available to the accused as the Division Bench in its order mentioned that it was the present accused who started the assault on which rest of them participated in the assault. Statements of eyewitnesses are also to that effect. As far as the accused is concerned, on a trivial reason, he has given blow on the vital part of the body of the deceased. The Postmortem Report shows nature of injuries sustained by the deceased. The deceased sustained in all 17 injuries including internal injuries. Insofar as injuries on the abdominal part are concerned, the same are attributed to the accused. The injuries are stab wound over greater culvature of stomach entering into cavity having corresponding injuries, coil of small intestine with mesentery protruding out through injury No.14 mentioned in column no.17 with evidence of stab over mesentery. It is submitted that the nature of injuries sufficiently shows force used by the accused. In view of that, learned Additional Public Prosecutor for the State and learned counsel for the complainant pray for dismissal of the appeal.

8. Having heard learned counsel for parties and perused the First Information Report and statements of eyewitnesses,

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it reveals that on a trivial reason quarrel started between the accused and the deceased. The statements of eyewitnesses further show that the accused was asking about mobile number of the deceased. At about 4:00 pm, when the deceased was communicating with the accused and other co-accused persons, the accused took out a knife and gave a forceful blow on the abdomen of the deceased due to which abdominal portion of the deceased was damaged. Subsequent to the first blow by the accused, other co-accused persons also gave blows not only to the deceased but also to the complainant who sustained injuries.

9. First limb of submissions of learned counsel for the accused was that the accused is entitled to be released on bail on the ground of parity.

10. As far as the parity is concerned, the entire incident started at the behest of the accused. It was the accused who gave first blow on the vital part of the body of the deceased which caused death of the deceased. The blow was so forceful that internal organs were damaged due to the said blow.

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11. As regards the parity, it is well settled that while applying principle of parity, the court cannot exercise its powers in a capricious manner and has to consider totality of circumstances before granting bail.

12. The Honourable Apex Court, in the case of **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and anr¹**, held that while considering the parity, while granting bail, the court must focus on role of the accused and not only weapon carried by accused. It is further observed that Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance.

13. The Honourable Apex Court, in the case of **Tarun Kumar vs. Assistant Director, Directorate of Enforcement²**, also observed that parity is not law. While applying the principle of parity, the court is required to focus upon role attached to the accused whose application is under

¹ (2021)6 SCC 230

² 2023 SCC OnLine SC 1486

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consideration. It is further observed that It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.

14. The another submission of learned counsel for the accused is that since the date of arrest, the accused is behind the bars and the trial is not commenced. Considering the role attributed to the accused, mere delay in trial is not sufficient to grant bail to the accused.

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15. The Honourable Apex Court, in the case of **Gurwinder Singh vs. State of Punjab and anr³**, held that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail.

16. Similar is the position insofar as the present accused is concerned. The entire incident started at the behest of the accused. The vital role giving a blow on vital part of the body of the deceased is attributed to the accused. There is a direct nexus between injuries sustained by the deceased and cause of death. Thus, considering a *prima facie* case is made out against the accused, the appeal deserves to be dismissed and the same is **dismissed**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!