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

CRIMINAL APPEAL NO.305 OF 2024

Shubham Laxminarayan Jaiswal,
Aged about 29 Years,
Occupation – Business and Education,
R/o Station Fail, Wardha.

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Wardha City,
District Wardha.

2. Anand Pandharinath Randhir,
Aged about 60 Years,
R/o Near Buddha Mandir,
Station Fail, Wardha.

.... RESPONDENTS

Mr. Mir Nagman Ali, Counsel for the appellant.
Mrs. M. A. Barabde, APP for the respondent No.1/State.
Mr. A. M. Jaltare, Counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21.08.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. By preferring this appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant has challenged the order of rejection of the bail application in Misc. Criminal Bail Application No.421/2022 dated. 24.11.2022.

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4. The appellant came to be arrested on 01.06.2022 in connection with Crime No.788/2022 registered under Section 302, 324 and 201 read with Section 34 of the Indian Penal Code and under Sections 3(2)(va), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

5. The crime is registered on the basis of report lodged by Anand Pandharinath Randhir on an allegation that on the day of incident i.e. on 31.05.2022 after coming from the work, he met his son and thereafter, he came near the house of the present appellant, at the relevant time, there was a hot altercation of the words between his son and the present appellant therefore, people gathered there, at the relevant time, the present appellant took out the knife and gave a blow on his neck. It is further alleged that present appellant has given a repeated blow on the person of the deceased. On the basis of the said report, police have registered the crime against the present appellant.

6. After registration of the crime, the present appellant has preferred an application for bail before the Division Bench bearing No.26/2023 which was rejected considering the nature of the offence. The said order was challenged before the Hon'ble Apex Court by preferring Special Leave to Appeal (Cri.)

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No.7414/2023 wherein the Hon'ble Apex Court considered the aspect and observed that if the charges are not framed and trial is not commenced within a period of six months from today, it will be open to the petitioner to make a fresh application to the High Court for grant of bail.

7. Learned Counsel for the appellant submitted that in view of the observation of the Hon'ble Apex Court and in view of the liberty he preferred an application before the learned Special Court for grant of bail, but the same was rejected by the learned Special Court considering the gravity of the offence. He submitted that for more than two years the appellant is behind bar and there is no progress in the trial. The ground for bail is the long incarceration and there is no progress in the trial and therefore, the right of the present appellant as far as the speedy trial is concerned, is affected.

8. Learned Counsel for the appellant placed reliance on the decision of **Javed Gulam Nabi Shaikh vs. State of Maharashtra and another in criminal Appeal No.2787/2024 decided on 03.07.2024.** It is submitted by the learned Counsel for the appellant that in the said decision the Hon'ble Apex Court has considered the fundamental right of an accused to have a speedy trial under Article 21 of the Constitution. He submitted that herein the present case also the

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appellant is behind bar since last more than two years and there is no progress in the trial. The possibility of disposal of the trial in the near future is also ruled out as yet muddemal has not received and CA reports have also not filed. In view of that he prays for grant of bail.

9. Learned APP and learned Counsel for the respondent No.2 strongly opposed the said application and submitted that charges are already framed and summons were already issued and as soon as the charge is framed, the trial is commenced. Therefore, the contention of the learned Counsel for the appellant is not correct that trial is not commenced. They further submitted that the manner in which the alleged incident is occurred and the manner in which the deceased was assaulted is to be taken into consideration. Considering the gravity of the offence and the fact that the present appellant is the main accused who has given the repeated blows on the person of the deceased and the quarrel started due to the trifle reasons. The *prima facie* case is made out against the represent appellant, if he is released on bail, he would involved in similar type of the activities, in view of that the appeal deserves to be dismissed.

10. Learned Counsel for the respondent No.2 also placed on record copy of the roznama which shows that the muddemal was not produced and therefore, the trial is not progressed.

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11. After hearing the learned Counsel for the appellant and learned APP for the State and learned Counsel for the respondent No.2, perused the entire chargesheet from which it reveals that for the trifle reason during the hot exchange of words between the son of the informant and the present appellant. The present appellant took out the knife and given a blow of knife on the neck of the deceased and thereafter, again given a repeated blow on the person of the deceased. There is no dispute as to the fact that the deceased was eliminated by the present appellant by giving repeated blows. As far as the gravity of the offence is concerned, there is no dispute that the involvement of the present appellant is in the grievous offence. At the same time, the observation of the Hon'ble Apex Court is also requires to be looked into.

12. Learned Counsel for the appellant placed reliance on the judgment of the **Javed Gulam Nabi Shaikh** (supra) wherein the Hon'ble Apex Court has observed that if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime

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committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

13. In **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh** in **Criminal Appeal No.2790/2024 decided on 18 July, 2024** wherein also the issue regarding the speedy trial was considered by the Court and it is held by the Apex Court that this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail.

14. Here in the present case also the applicant is behind bar since 01.06.2022. From the report of the District Judge it reveals that the charges are framed against the accused vide Exh.2 on 12.12.2022. Thereafter, the matter is pending for recording the evidence but within two years the muddemal property is not deposited before the Court. He has also received the letter from the Police Station, Wardha dated 08.07.2024 stating that muddemal is not received from the Forensic Laboratory, Nagpur. On 25.07.2024 also letter is issued by the Court to the Police Station, Wardha calling them upon to submit muddemal in Court. After issuance of this letter also there is no

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progress as to the depositing of the muddemal is concerned. The roznama placed on record by the learned Counsel for the respondent No.2 also shows that as muddemal and the CA reports are not produced, trial has not proceeded. Thus, from the certified copy of the roznama and the report of District Judge and Additional Sessions Judge, Wardha it reveals that the trial was not commenced merely because the prosecution has not produced the muddemal or the CA report before the Court. Though various communications are issued by the prosecution agency to the Forensic Laboratory for handing over the muddemal and the CA report, however there is no progress in the trial. It appears from the report of the District Judge and Additional Sessions Judge that charges are also framed prior to two years i.e. on 12.12.2022. Thus, within two years also no steps are taken by the investigating agency to produce the said muddemal on record. Thus, in view of the observations made by the Hon'ble Apex Court that if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Admittedly, the crime committed is serious but in view of the observation of the Hon'ble Apex Court and in view of

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the Article 21 of the Constitution, the appellant cannot be kept behind bar for indefinite period, in view of that the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The criminal appeal is allowed.
- (ii) The order dated 24.11.2022 passed by the learned Special Court rejecting the Bail Application of the present appellant is hereby by quashed and set aside in Misc. Criminal Bail Application No.421/2022.
- (iii) The appellant **Shubham Laxminarayan Jaiswal** shall be released on bail in connection with Crime No.788/2022 registered under Section 302, 324 and 201 read with Section 34 of the Indian Penal Code and under Sections 3(2)(va), 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.50,000/- with one solvent surety of the like amount.
- (iv) The appellant shall not enter into the jurisdiction Wardha District except attending the proceeding before the trial Court, till culmination of the trial.
- (v) The appellant shall not leave India without prior permission of the District Court.
- (vi) The appellant shall furnish detail address of his whereabouts along with the address proof before the District Court and Additional Sessions Judge, Wardha.

15. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)