



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

CRIMINAL APPEAL NO. 530 OF 2023

APPELLANT: Sheikh Parvez s/o Sheikh Rashid (In Jail)
Age 29 years, R/o Behind Zakir Hussain
Colony Tarfail Ward No.25,
District Wardha.

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

RESPONDENTS 1] State of Maharashtra,
through Police Station Officer,
Police Station, Wardha.
District Wardha.

2] Anil Dilip Hatagade,
R/o Ashoknagar Ward No.28,
Tarfail, Wardha.

Mr. Inamul Haque, counsel for appellant.
Mrs. Sneha Dhote, APP for respondent No.1.
Mr. S.K. Bhoyar, counsel for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 24/01/2024

ORAL JUDGMENT :

1. Heard. **Admit.**
2. Heard finally with the consent of the learned counsel appearing for the parties.
3. By preferring this appeal, the appellant has challenged the order passed by the Additional Sessions

Judge, Wardha, in Criminal Bail Application No.278/2023 dated 23/06/2023 by which the bail application filed by the applicant was rejected.

4. Heard learned counsel for the appellant, learned APP for the State, and learned counsel for respondent No.2. I have gone through the record and the charge-sheet. The appeal is filed under Section 14(A) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989'). As per the allegation of the prosecution, deceased Sunil, the nephew of respondent No.2 i.e. original complainant, Anil Hatagade which shows that there was an illicit relationship between one Tyba Rahsid Sheikh and the deceased Sunil Dilip Hatagade, present applicant was residing in the said lane, and the applicant used to threaten the deceased that he would see how he would continue the relationship with the said Tayba Rashid Shaikh. On 24/10/2018, the deceased was taken by the present applicant in his vehicle, and he did not returned back. It has been specifically alleged that on 24/10/2018 Sonu Anant Shende came to his house and informed him that deceased Sunil Hatagade had left the place along with the present applicant in his Bolero car. On getting this information, Anand Hatagade tried to locate and search for the deceased; however, he could not locate the deceased. The missing report also shows that he tried to make a phone call on the cell phone of the deceased; however, his efforts gone

invain.

5. During the inquiry into the missing report, the police authority received a clue that the deceased went in the Bolero car of the appellant, and therefore, they searched the present appellant, and the appellant was found residing at Gujrat. Therefore, the police authorities apprehended the appellant and his friend, namely Sheikh Mobin. The appellant has shown the place where the dead body of the deceased was shown; in the meantime, respondent No. 2 has lodged the first information report on 01/11/2018. The recovery of the dead body would show that the place where the dead body of the deceased was thrown was a place normally not accessible to anybody. The deceased was last seen with the present appellant. Prima-facie substance was found by the investigating agency. Thereafter, the memorandum statement of the present appellant was recorded under Section 27 of the Indian Penal Code.

6. In view of the said statement, the dead body of the deceased was found in a completely decomposed condition. It was sent to the Post Mortem. The exact opinion could not be obtained; however, Column No. 17 of the Post-Mortem shows that there were injuries of size 56 cm x 14 cm and 16 cm x 10 cm x 6 cm, which shows the deceased was assaulted brutally and which resulted in his death. The charge-sheet also points out that there is a recovery of a knife

which was used for the commission of the crime at the behest of the present appellant. On this count, the earlier bail application of the present appellant was rejected, and the appeal filed against the said order was also dismissed by this Court.

7. The learned counsel for the appellant submitted that since the date of arrest, the appellant is behind bar. There is no progress in the trial. Thus, there is change in circumstances and in view of that, the appellant be released on bail.

8. Per contra, the learned APP strongly opposed the present appeal on the ground that the prima-facie material sufficiently shows the involvement of the present appellant in the alleged offence. This Court has earlier observed that in what manner the deceased was eliminated by the present appellant. Thus, prima facie evidence is there to connect with the alleged offence. The appellant was found in Gujarat after the incident. If he is released on bail, he would not be available for trial, and the trial would be held up.

9. The learned counsel for the informant also reiterated the said contentions and endorsed that the appellant was found in Gujarat after the incident. There is every apprehension that if he is released on bail, he would not be available for trial. He further submitted that, now trial is already commenced therefore, the application deserves to

be rejected.

10. I have perused the order passed by the learned trial court, in which it is observed that there is no change in circumstances to enter the present bail application; only change in circumstances pointed out that the delay in trial and the sickness of the mother of the applicant. The learned trial court earlier observed that, no doubt, there is a delay in this matter; however, it appears that after the case against the juvenile in conflict with law was filed before the Board, the Juvenile Justice Board, in the meanwhile sent the case to try him as an adult. Therefore, there is some delay due to the procedural aspect. Now the charge-sheet against the child in conflict with law is also forwarded to this Court by the Juvenile Justice Board, therefore, there is no hurdle to start the trial.

11. Prima-facie, there is material on record to show that deceased was having love affair with the sister of the present accused. The accused has taken the deceased along with him and thereafter, the deceased was not seen alive. The dead body of the deceased was recovered at the instance of the present appellant.

12. Thus, from the order of the learned trial Court it reveals that there is a prima-facie material against the present appellant. I have also perused the order passed by this Court in Criminal Appeal No. 42/2020 wherein also, the Division

Bench of this Court has observed that at the instance of the present appellant, the place where the dead body of the deceased was found. The dead body of the deceased was also discovered at the instance of the present appellant.

13. It is further observed that in a Post Mortem Report, the injuries are shown to be 56 cm x 14 cm and 16 cm x 10 cm x 6 cm. which is sufficient to show how brutally the deceased was eliminated. The charge-sheet also points out that there is a recovery of a knife which was used for the commission of the crime at the behest of the appellant. Thus, considering the prima-facie material, the earlier appeal was dismissed by this Court.

14. Considering the observation of the learned trial Court the delay is due to the procedural aspect, and now there is no hurdle in commencing the trial. The learned counsel for respondent No.2 placed on record the Roznama which shows that already, the case is fixed for recording the evidence, and the next day of hearing is kept on 10/02/2020. Considering the prima-facie material against the present appellant, the nature and circumstances under which the alleged incident has taken place and the manner in which the deceased was eliminated, it is sufficient to show that the prima-facie material is against the present appellant. Therefore, the appeal is devoid of merit. I do not find any error in the order passed by the learned trial Court.

15. In view of that, criminal appeal deserves to be dismissed. Accordingly, I proceed to pass following order:

The criminal appeal is dismissed.

[URMILA JOSHI-PHALKE, J.]

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