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

CRIMINAL APPEAL NO.393 OF 2024

Siddharth s/o Aadesh Bansod,
Age : about 24 Years,
Occupation : Labour,
R/o.: Samta Nagar, Ward No.3,
Urjanagar, District Chandrapur

..... APPELLANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Durgapur,
District Chandrapur.

2. Pankaj s/o Ramesh Watekar,
Aged about adult,
Occupation : Nil,
R/o. : Nehru Nagar, Durgapur,
District Chandrapur.

.... RESPONDENTS

Mr. A. C. Jaltare, Counsel for the appellants.
Mr. K. R. Lule, APP for respondent No.1/State.
Ms. A. P. Murrey, appointed Counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27.09.2024

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. By preferring this appeal, the appellant has
challenged the order passed by the learned Additional Sessions

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Judge and Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Chandrapur dated 20.12.2023 below Exhibit 31 by which the application of the present appellant for grant of bail is rejected.

4. The appellant came to be arrested on 08.11.2022 in connection with Crime No.189/2022 registered with Police Station, Durgapur, District Chandrapur for the offences punishable under Sections 143, 147, 148, 302, 427, 120-B, 212 read with Section 149 of the Indian Penal Code and under Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989') and Sections 4 and 45 of the Indian Arms Act and Section 135 of the Maharashtra Police Act.

5. As per the allegations against the co-accused that on 07.11.2022 deceased Mahesh Meshram consumed liquor with his friend namely Lala at Emali Bar at Restaurant, Durgapur and thereafter, while leaving from Restaurant, the deceased was attacked by 6 to 7 persons with deadly weapons due to the prior enmity between them, at the relevant time, deceased attempted to save himself and ran towards the car, but all accused persons killed him with deadly weapons. The friend of the deceased tried to rescue him, but the car was damaged by the accused persons. As far as present appellant is concerned, it is alleged that he was

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present and the member of unlawful assembly and in furtherance of the common object of that assembly, present appellant and other co-accused eliminated him. It is alleged that the present appellant took all the accused persons in the car and helped them to screen themselves from the punishment of the offence which they have committed.

6. After registration of the crime, the appellant approached to the learned Special Court for grant of bail which was rejected, hence this appeal.

7. Heard learned Counsel Mr. Jaltare for the appellant who submitted that as far as the allegations against the present appellant is concerned, it is only to the extent that the informant has disclosed the name of one Bhagirathi while lodging the report and other 7 to 8 persons who were unknown. During the investigation, the statements of the eye witnesses are recorded in which also neither the name of the present appellant revealed nor the description was given by any of the eye witnesses of the present appellant. The clothes of the present appellant are also seized by the investigating agency, but no blood stains are found on his clothes. During the investigation, the appellant was also placed for the Test Identification Parade, but during Test Identification Parade, none of the eye witnesses have identified. The allegation made is against the present appellant on the basis

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of general diary entry that he is the person who assisted the other co-accused to screen themselves from punishment by fleeing away from the spot of incident. It is submitted that as far as the offence which is attracted against the present appellant under Section 212 of Indian Penal Code is concerned, which is a bailable one even if the major offence is punishable with the capital punishment. Section 212 of the Indian Penal Code is for harbouring the offender. He submitted that allegation is also on the basis of the statement of the co-accused. Except the statement of the co-accused, there is no other material to show that the present appellant assisted the other co-accused for fleeing away from the spot of incident. As far as the criminal antecedents are concerned, he submitted that no material is placed before the Court either he involved in any crime beside this crime. Thus, considering the nature of the evidence, the appellant be released on bail as investigation is already completed and charge-sheet is filed. He further submitted that no doubt, the offence alleged is grave and serious in nature but considering the nature of the evidence which is collected to connect the present appellant merely because the nature of the offence is serious, is not sufficient to reject his bail.

8. Learned APP strongly opposed the said appeal on the ground that in a very brutal manner the deceased was

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eliminated by the present appellant and the other co-accused. The manner in which the alleged offence is committed and the role played by the present appellant is harbouring the criminals to screen themselves from punishment. In view of that, the application deserves to be rejected.

9. Heard learned Counsel for the appellant and the learned APP for the State. Perused the investigation papers as well as the recitals of the FIR. Admittedly, the name of the present appellant is not mentioned in the FIR. After going through entire charge-sheet with the help of the learned APP and learned Counsel for the appellant, it reveals that the role attributed to the present appellant is only on the basis of the statement of the co-accused. As far as his involvement is concerned, neither the informant nor the eye witnesses have named him in the statement. His arrest is only on the basis of the statement of the co-accused. Though there are eye witnesses to the said incident, but they have identified the present appellant as an assailant and nowhere stated that the present appellant was present at the time of incident. The general diary entry to the extent that he has assisted the other co-accused from fleeing away from the spot of incident is also on the basis of the statement of the co-accused. Thus, besides the statement of the co-accused to show his involvement there is

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absolutely no material to connect him with the alleged offence. During the investigation, his clothes were also seized but it nowhere discloses that it bears the blood stains. So, considering the entire material collected during the investigation, though offence is of a grievous nature, but in absence of any material against the present appellant which is collected during the investigation, he has made out a case for grant of bail. In view of that, the appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 20.12.2023 passed by the learned Special Judge, Chandrapur below Exh.31 rejecting the bail application is quashed and set aside.
- (iii) The appellant **Siddharth s/o Aadesh Bansod** shall be released on bail in connection with Crime No.189/2022 registered with Police Station, Durgapur, District Chandrapur for the offences punishable under Sections 143, 147, 148, 302, 427, 120-B, 212 read with Section 149 of the Indian Penal Code and under Section 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 4 and 25 of the Arms Act and Section 135 of the Maharashtra Police Act, on executing PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (iv) The appellant shall not leave the jurisdiction of Chandrapur District without prior permission of the District Court, Chandrapur.
- (v) The appellant shall not enter into the jurisdiction of Durgapur Police Station, till culmination of the trial.

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

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

11. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.