



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

CRIMINAL APPEAL NO.565 OF 2023

Kundan @ Rundan s/o Vishnu Jadhav,
Aged about 29 years,
Occupation – Labour,
R/o. Tathod Nagar, Mothi Umari,
Akola, Tq. and District Akola

...APPELLANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station Civil Lines,
Akola
2. Smt. Kavita Sunil Gawai,
Aged about 44 years,
Occupation – Housewife,
R/o. Thathod Nagar,
Mothi Umari, Akola
Tq. and District Akola,
P.S. Civil Lines, Akola

...RESPONDENTS

Mr. S.V. Sirpurkar, Advocate for the appellant.
Mr. A.B. Badar, APP for the State.
Ms S.K. Phaltankar, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 06, 2024.

ORAL JUDGMENT :

ADMIT. Heard finally with the consent of learned Counsel for
the parties.

2. By preferring this appeal, the appellant has challenged the order passed by the Special Judge and Additional Sessions Judge, Akola in Special Atrocity Case No.158/2021 dated 25/03/2022 whereby the Special Judge has rejected the application of the present appellant for grant of bail. The present appeal is preferred by the appellant under Section 14(A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act' for short) for grant of bail.

3. The accusation against the present appellant is on the basis of report lodged by the wife of the deceased Kavita Sunil Gawai alleging that the present appellant and his sister are her neighbors. On 11/09/2021, the deceased has bursting crackers in front of the house, and therefore, the present appellant assaulted him by means of iron pipe as there was a quarrel between them, due to which her husband sustained injuries and subsequently during treatment succumbed to the death. On the basis of said report, police have initially registered the crime under Section 324 of the Indian Penal Code, after the death of the deceased it was converted under Section 302 of IPC. Thus, the appellant is prosecuted of the offence punishable under Sections 302, 304, 323, 324, 326, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3(2)(va), 3(1)(r)(s) of the Scheduled Caste and

Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act' for short).

4. Learned Counsel for the appellant submitted that initially the present appellant has preferred an appeal bearing No.300/2022 which was withdrawn with liberty as this Court has directed the Sessions Court to expedite the trial and trial shall be completed within one year of framing of charge. Said order was passed on 18/08/2022, till today no charge is framed. He submitted that even on merits the quarrel took place between the appellant and the deceased suddenly. There was no intention to commit the murder of the deceased. Immediately, after the incident, the deceased was taken to the hospital. The injury noted in the hospital by the Medical Officer are simple injuries. The medical report of the Government Medical College, Akola is on record which shows that the deceased has sustained the blunt trauma on occipital region. Both injuries are noted as a simple injuries. Thereafter he was referred at Nagpur. During treatment, he undergone the surgery and thereafter the complications was developed and he succumbed to the death after five days. He submitted that even accepting the allegations as it is, there was no preparation and no intention to commit the murder of the deceased even the statement of the wife of the deceased and the eye-witnesses shows that it is a case of single blow given by the present appellant.

Now, the investigation is already completed and charge-sheet is filed. In view of the order of this Court, the trial Court has not even framed the charge. The appellant is behind bar since the date of his arrest i.e. for more than two years. Considering that yet charge is not framed, the appellant cannot be kept behind bar for the indefinite period. In view of that, the appellant be released on bail.

5. Learned Additional Public Prosecutor and learned Counsel for respondent No.2 strongly opposed the application and submitted that the deceased was assaulted by using the iron rod due to which deceased has sustained grievous injuries which resulted into his death. The cause of death is head injury. The eye-witnesses substantiate the contention of the informant. Considering the *prima facie* case, the appeal deserves to be dismissed.

6. After hearing the learned Counsel for the parties and perused the entire record and the investigation papers. Admittedly, the application is mainly on the ground that though this Court has expedited the trial, the trial Court has not even framed the charge against the accused, therefore, report of the District Judge is called. From the report of the District Judge it reveals that charge is not framed and trial is not commenced. Admittedly, this Court has directed the trial Court to frame

the charge and expedite the trial by order dated 18/08/2022. The appellant is arrested on 30/09/2021 thus, since more than two years he is behind bar and there is no progress in the trial. As far as merit of the matter is concerned from the recitals of the FIR it reveals that there was a hot exchange of words between the deceased and the present appellant on account of cracking of the crackers in front of the house. As per the allegation by the informant present appellant has given a blow of iron rod which is a single blow. Immediately, he was shifted to the hospital. The Medical Officer of Government Medical College and Hospital examined and the injuries noted are the simple injuries. Subsequently, he was shifted to the hospital at Nagpur and during treatment he succumbed to the death. There is no doubt as to the cause of death as death of the deceased is caused due to head injury. Admittedly, the investigation papers nowhere shows that the appellant has prepared to assault the deceased and after preparation and with intention to commit his murder, he has given the blow. Admittedly, the alleged incident has taken place in a sudden fight and sudden quarrel between the deceased and the present appellant. The investigation is already completed and charge-sheet is already filed. Since last two years there is no progress in the trial. Considering the aspect and the circumstances in which the alleged incident has taken place, the case would cover under the exception however, whether it amounts to

culpable homicide amounting to murder or culpable homicide not amounting to murder is a matter of evidence. Considering the further incarceration of the present appellant is not required, the appeal deserves to be allowed by imposing certain conditions. Hence, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Special Judge and Additional Sessions Judge, Akola in Special Atrocity Case No.158/2021 dated 25/03/2022 rejecting the bail application of the appellant is hereby quashed and set aside.
- (iii) The appellant - Kundan @ Rundan s/o Vishnu Jadhav in connection with Crime No.821 of 2021 registered at police station Civil Lines, Akola for the offence punishable under Sections 302, 304, 323, 324, 326, 504 and 506 read with Section 34 of the Indian Penal Code and under Sections 3(2)(va), 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on bail on executing P.R. Bond in the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety in the like amount.
- (iv) The appellant shall attend concerned Police Station as and when required for the investigation purpose.

(v) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

(vi) The appellant shall not enter into the vicinity of Tathod Nagar, Mothi Umari, Akola till the culmination of the trial.

7. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)

**Divya*