



Judgment

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

CRIMINAL APPEAL NO.542 OF 2024

Lokesh s/o Sunderlal Yadav,
aged about 42 years,
occupation – business,
r/o Yadav Chowk, Gondia, tahsil
and district – Gondia. **Appellant.**

:: V E R S U S ::

1. State of Maharashtra,
through its Police Station Officer,
Police Station Gondia City, Gondia
tahsil and district – Gondia.

2. Sau.Manju w/o Nishant Meshram,
aged about 42 years,
occupation – labour,
r/o Bhim Nagar, Behind Maitra
Buddha Vihar, Gondia, tahsil and
district – Gondia. **Respondents.**

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Shri S.V.Manohar, Senior Counsel assisted by Shri
N.R.Tekade, Advocate for the Appellant.
Shri K.R.Lule, Additional Public Prosecutor for
Respondent No.1/State.
Shri S.P.Dharmadhikari, Senior Counsel assisted by Shri
D.V.Mahajan, Advocate for Respondent No.2.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 13/11/2024
PRONOUNCED ON : 19/11/2024

JUDGMENT

1. The present appeal is preferred under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act of 1989) challenging order dated 23.9.2024 passed by learned Additional Sessions Judge, Gondia in Misc.Criminal Bail Application No.217/2024 whereby the application moved by the appellant (accused) for grant of bail was rejected.

2. Heard learned Senior Counsel Shri S.V.Manohar for the accused; learned Additional Public Prosecutor Shri K.R.Lule for respondent No.1/State, and learned Senior Counsel Shri S.P.Dharmadhikari for respondent No.2 (complainant).

3. **Admit.**

4. The accused came to be arrested on 7.7.2024 in connection with Crime No.392/2024 registered under

3

Sections 120-B, 212, and 302 of the Indian Penal Code and 3(2)(v) of the Act of 1989.

5. A report was lodged by Manju Nishant Meshram alleging that her son namely Daddu @ Ujjwal (the deceased) was murdered by co-accused persons assaulting him by means of sharp object due to previous enmity between the accused and the deceased. She raised a suspicion that the accused and other co-accused persons entered into an agreement to eliminate the deceased and the accused agreed to pay some amount to co-accused namely Ankit Gurve and Harsh @ Harsha Bombarde and accordingly, they eliminated the deceased. On the basis of the said report, the police registered the crime against the accused and other co-accused persons.

6. After registration of the crime, the accused approached the special court for grant of bail, which was rejected. Hence, this appeal.

4

7. Learned Senior Counsel Shri S.V.Manohar for the accused, submitted that involvement of the accused in the present crime is merely on the basis of statements of co-accused persons, which is not admissible and CDRs show communication between him and co-accused Pankaj @ Golu Murli Yadav, who, admittedly, is relative of the accused. Learned Senior Counsel submitted that said phone calls between the accused and co-accused Pankaj @ Golu were much prior to the incident. The incident occurred on 18.6.2024. Whereas, CDRs show communication between both of them from 6.8.2023 to 24.5.2024. Thus, there is no CDR collected that either on the day of the incident or within proximate time, there was communication between the accused and co-accused Pankaj @ Golu. CDRs nowhere show that there was any communication between the accused and other co-accused. The statements of witnesses also nowhere disclose any overt act attributed to the accused or at any point of time the accused was seen in company of the co-

5

accused. Thus, except CDRs, which are only to the extent of communication between the accused and co-accused Pankaj @ Golu, there is no evidence to connect the accused with the alleged offence. The statement of co-accused, admittedly, is not admissible, which is, time and again, held by the Hon'ble Apex Court.

Learned Senior Counsel placed reliance on the decision of the Hon'ble Apex Court in the case of **Rahul vs. State of Delhi, Ministry of Home Affairs and another**¹, wherein it is held that disclosure statements of accused being recorded in police custody cannot be exhibited by the trial court, as they are hit by Section 25 of the Evidence Act and cannot be treated as extra-judicial confession. However, held, if a confession is made by accused before the police, and a portion of such confession leads to recovery of any incriminating material, such portion alone would be admissible under Section 27 of the Evidence Act, and not entire confessional statements. Hence, the information to the

¹ (2023)1 SCC 83

6

police officer leading to discovery of place of the offence would be admissible to the extent indicated in Section 27 read with Section 8 of the Evidence Act, but not the entire disclosure statement in the nature of confession recorded by the police officer.

In view of that, the evidence as to the involvement of the accused is not sufficient to reject the application for grant of bail.

8. Learned Additional Public Prosecutor Shri K.R.Lule for the State, strongly opposed the application and submitted that statements of witnesses, previous enmity between the accused and the deceased, criminal antecedents against the accused showing his involvement, and previous series of offences are sufficient to place the accused behind bars and, therefore, the application deserves to be rejected.

9. Learned Senior Counsel Shri S.P.Dharmadhikari for the complainant, submitted that it is not necessary

7

for the accused to come in picture. The gang operates for illegal purposes and it is not necessary for leader of the gang to be present at crime scene. CDRs between the accused and other co-accused persons show that the accused was in contact with co-accused Pankaj @ Golu, which sufficiently shows involvement of the accused. There was a previous enmity. In view of that, the appeal deserves to be rejected.

10. After hearing both sides and perusing investigation papers, it reveals that it is neither case of the prosecution nor of the accused that the accused was present at the spot of the incident. The allegations against the accused are that there was previous enmity between him and the deceased and due to the said previous enmity, he entered into an agreement with co-accused persons to eliminate the deceased and promised to pay some amount and co-accused persons eliminated the deceased. The deceased sustained grievous injuries due to the assault at the hands of the

8

co-accused and he died due to stab injuries and head injury. Admittedly, no direct evidence is available as far as the accused is concerned to show his connection with other co-accused persons. Only fact is that, as per statements of witnesses, previously some quarrel took place between the deceased and the accused. It is alleged by the prosecution that the accused and other accused persons entered into an agreement and in pursuance of the said agreement, the accused hired co-accused persons Ankit Gurve and Harsh @ Harsha Bombarde. Thus, as per allegations, the accused was a part of the conspiracy. To show involvement of the accused, in the conspiracy, the prosecution placed reliance on statements of co-accused persons.

Admittedly, statements of co-accused persons as to involvement of accused in commission of crime are not admissible. It is admissible only to the extent of discovery of fact when statements lead to recovery of any incriminating material.

Besides statements of co-accused persons, the prosecution placed reliance on CDRs.

Admittedly, CDRs nowhere reflect any communication between the accused and other co-accused persons either on the day of the incident or within the proximate time when the said incident took place. CDRs show calls between the accused and co-accused Pankaj @ Golu, who, admittedly, is relative of the accused. CDRs show 104 calls between the accused and co-accused Pankaj @ Golu from 6.8.2023 to 24.5.2024 i.e much prior to the incident. As far as calls between the accused and co-accused Pankaj @ Golu are concerned, the same were neither on the day of the incident nor prior to the incident during the proximate period. There were no calls between the accused and other co-accused persons also.

11. Learned Additional Public Prosecutor for the State invited my attention towards CCTV Footage collected during the investigation, which also nowhere shows

10

presence of the accused with co-accused Pankaj @ Golu or any other co-accused persons. The CCTV Footage shows a meeting between co-accused Pankaj @ Golu and other co-accused persons. Statements of witnesses only raises a suspicion regarding involvement of the accused.

12. The allegation against the accused is that he hatched the conspiracy and in pursuance of the said conspiracy, hired co-accused persons to eliminate the deceased. Underlying purpose for insertion of Section 120-B of the Indian Penal Code was to make a mere agreement to do an illegal act or an act which is legally punishable under law. The illegal act may or may not be done in pursuance of an agreement, but mere formation of an agreement is an offence which is punishable. The law relating to conspiracy has been put forth in Halsbury's Laws of England, as under:

“matters common to all conspiracies, there are statutory common law offences of both statutory

11

and common law conspiracy is the fact of combination by agreement. The agreement may be expressed or implied or in part express or part implied. The conspiracy arises and the offence is committed as soon as the agreement is made and the offences continues to be committed so long as the combination persists that is until conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The *actus reus* in a conspiracy is, therefore, the agreement for execution of unlawful conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same or in the same place. It is necessary to show meeting of minds a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator shall have been in communication with every other person."

12

Thus, gist of the offence of conspiracy lies not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting to do them, but in forming of the agreement between parties. Agreement is essential. Mere knowledge or even discussion of plan is not *per se* enough.

13. In the case of **Noor Mohammed Yusuf Momin vs. State of Maharashtra**², the Hon'ble Apex Court observed that criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107 of the

² AIR 1971 SC 885

13

Indian Penal Code. A conspiracy from its very nature is generally hatched in secrecy. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence.

14. In the case of **Major E.G.Barsay vs. State of Bombay**³, the Hon'ble Apex Court observed that gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.

15. In the case of **Saju vs. State of Kerala**⁴, the Hon'ble Apex Court, while explaining concept of conspiracy, observed that to prove the charge of

³ AIR 1961 SC 1762

⁴ 2001 (1) SCC 378

14

criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not illegal, by illegal means. To attract applicability of Section 120-B, it has to be proved that all accused had intention and they had agreed to commit crime. There is no doubt that conspiracy is hatched in private and in secrecy for which direct evidence would rarely be available.

16. In the light of the well settled law, while drawing an inference on the basis of material brought on record to arrive at a finding as to whether accused is involved in criminal conspiracy or not, though there is no direct evidence to show involvement in conspiracy, but at least there should be some evidence *prima facie* to show involvement of accused in conspiracy.

17. In the present case, the only evidence available is to the extent of calls between the accused and co-accused Pankaj @ Golu i.e. much prior to the incident.

15

Considering principles summarized by the Hon'ble Apex Court, at this stage, involvement of the accused, on the basis of the said material, appears to be doubtful.

18. The another contention is that there are criminal antecedents against the accused and, therefore, the application deserves to be rejected. Mere ground of criminal antecedents is not sufficient to curtail liberty of the accused.

19. In this view of the matter, the accused has made out a case to release him on bail and, therefore, the order passed by the court below rejecting the application for grant of bail deserves to be quashed and set aside. Accordingly, I proceed to pass following order:

ORDER

(1) The Criminal Appeal is **allowed**.

(2) The order dated 23.9.2024 passed by learned Additional Sessions Judge, Gondia in Misc.Criminal Bail

16

Application No.217/2024 rejecting the application for grant of bail is hereby quashed and set aside.

(3) Appellant Lokesh s/o Sunderlal Yadav, shall be released on bail in connection with Crime No.392/2024 registered under Sections 120-B, 212, and 302 of the Indian Penal Code and 3(2)(v) of the Act of 1989 on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(4) The appellant shall not enter into Gondia city except on dates of proceeding before court below.

(5) The appellant shall furnish his a detailed address along with address proof where he intends to reside after he is released on bail.

(6) The appellant shall not directly or indirectly make any inducement and threat or promise to any of witnesses of the crime in question or through electronic media or in any other manner.

17

(7) The appellant shall attend proceedings before the court below without seeking any exemption unless there are exceptional circumstances.

Appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!