



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

CRIMINAL APPEAL NO.735 OF 2023

Atal Kumar @ Guddu Kumar s/o Kashinath
Singh Yadav
Aged about 24 years, Occupation – Labour
R/o. Murat Tola – Davath,
P.S. Davath, District Rohtas (State-Bihar)
(presently in Jail)

...APPELLANT

VERSUS

1. State of Maharashtra,
(through Police Station Washim) (City)
Tq. and District Washim
2. Smt. Lata Pandit Wankhade,
Aged about 36 years,
Occupation – Household,
R/o. Lahuji Nagar,
District and Tq. Washim

...RESPONDENTS

Mr. A.M. Ghare, Advocate for the appellant.
Ms R.V. Sharma, APP for the State.
Ms A.S. Mishrikotkar, Advocate (appointed) for respondent No.2.
Mr. Kunal Dhoble, Advocate for Intervenor.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : APRIL 30, 2024.

ORAL JUDGMENT :

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

2. This is an appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short), the appellant has challenged the order dated 30/09/2023 whereby the Special Judge and Sessions Judge, Washim rejected the bail application of the appellant in Special Atrocity Case No.17/2023.

3. The accusation against the present appellant is on the basis of report lodged by Lata Pandit Wankhade alleging that on 10/11/2022 at about 4:30 p.m. she along with the injured and one other lady were proceeding in front of police station, Washim at that time one unknown boy aged about 20 to 25 years covering his face and wearing the cap and goggles came in front of them and gave a blow of knife on the abdomen of the injured Ranjana Paulkar, due to which she has sustained the grievous injuries. She was immediately shifted to the hospital. On the basis of said report, police have registered the crime against the unknown person. During investigation, it revealed to the investigating agency that the co-accused Suresh Mapari has hatched the conspiracy to eliminate the injured, and therefore, he engaged the present appellant to assault the injured and thereby present appellant has executed the act by giving repeated blows on the person of the injured, due to which injured has sustained in all 14 injuries on her person. During investigation, the

Investigating Officer has also prayed for T.I. parade and during the T.I. parade victim has identified the present appellant as an assailant.

4. Learned Counsel for the appellant submitted that as far as the involvement of the present appellant is concerned, the statement of the injured itself is inconsistent, contradictory and the involvement of the present appellant is not revealed as informant has not identified him. He further invited my attention towards the statement of witness Ranjana shows that prior to the TI parade the photographs of the present appellant was shown to him on the mobile phone and thereafter she has identified him.

5. Learned Counsel for the appellant submitted that there is no dispute as to the fact that the injured was assaulted by somebody and she has sustained in all 14 injuries but as far as the involvement of the present appellant is concerned entire prosecution revolves around the T.I. parade. During T.I. parade the injured has identified the present appellant but investigation paper shows that prior to T.I. parade the photographs of the present appellant was shown to her, therefore, the entire evidence as to the T.I. parade creates the doubt about the prosecution case. He further submitted that evidence as to the T.I. parade is not a substantial evidence and it only corroborates the prosecution story, if the prosecution evidence is consistent regarding the

assault on the injured by the present appellant. He submitted that as per the prosecution case one Suresh Kashinath Mapari has engaged the present appellant to eliminate the informant due to dispute between them but as far as the conspiracy is concerned except the allegation there is no other material to connect the present appellant to show that in pursuance of the said conspiracy, present appellant has executed the act. He further invited my attention towards the order passed by the Division Bench of this Court in Criminal Appeal No.907 of 2022 dated 09/01/2023 wherein this Court by observing that there is no evidence as to the motive as well as involvement of the co-accused in the conspiracy released on bail. He submitted that if the evidence of the conspiracy is not accepted by the Division Bench then the entire prosecution case fails on the ground that present appellant was engaged by the co-accused to eliminate the injured. He submitted that now investigation is already completed, further incarceration of the appellant is not required, and therefore, prays for releasing the appellant on bail.

6. Learned Additional Public Prosecutor, learned Counsel for respondent No.2 and learned Counsel engaged by the injured strongly opposed the said appeal on the ground that there is a *prima facie* material against the present appellant who caused 14 injuries on the person of the injured. The injuries are grievous in nature is sufficient to

cause death of the injured. Fortunately, the injured has received the timely treatment, and therefore, she is saved. It is further submitted that the appellant has identified during the identification parade. In view of that, learned trial Court has rightly rejected the application and no interference is called for.

7. I have heard learned Counsel for both the parties. Perused the entire investigation papers from which it reveals that at the instance of report lodged by the eye-witness to the occurrence a crime came to be registered. As per the recitals of the FIR on 10/11/2022 around 4:30 p.m. she along with two others including the victim lady were proceeding from the area known as Patni Tahsil of Washim City. While they were passing from the side of the Rural police station the victim was a little bit ahead of them and one unknown boy in age group of 20-25 years came in front of the victim and gave a repeated knife blows at the stomach, chest and hands of the victim causing her bleeding injury and fled away. The injured as well as the informant has narrated the description of the clothes of the assailant.

8. During the course of investigation it was found that one of the arrested accused namely Atal Kashinathsingh Yadav was the unknown assailant i.e. the present appellant. The other co-accused were also arrested and it revealed that they have hatched the conspiracy with

the present appellant to eliminate the victim lady. The statement of the injured victim was also recorded on three occasions. In her last statement recorded on 26/11/2022 she disclosed the name of the co-accused Suresh Mapari as a main conspirator. She further stated that said Mapari is an influential person of the vicinity and President of the political party and the victim was also belongs to the said party. She had association with the co-accused Mapari since last six years and the love relationship was developed between them but the co-accused was avoiding her. As per her contention, the police have arrested co-accused Zuber who was also having close association with the co-accused Suresh and they all have hatched the conspiracy and in pursuance of the said conspiracy they have engaged the present appellant to eliminate her and accordingly he had executed the act. The entire case regarding the role of the present appellant revolves around the statement of the injured and the T.I. parade. The injured has identified the present appellant during the T.I. parade but investigation papers shows that prior to the T.I. parade his photographs were viral on WhatsApp. Thus, this statement of the injured makes a T.I. parade doubtful. As far as the informant is concerned, she has not identified the appellant during the identification parade. As per the prosecution, prior to the incident the presence of the present appellant was noted by 3 – 4 witnesses. Admittedly, this 3 – 4 witnesses are not called for the T.I. parade. If they

would have been called for the T.I. parade definitely the prosecution case would have been substantiated by their evidence but they are not called for the T.I. parade and the present appellant was not put for the identification to be identified by them. Thus, presence of the appellant prior to the incident is also doubtful.

9. Considering the entire material which is collected during the investigation which shows that one unknown person has given a repeated blow of the knife on the person of the injured, said person is not identified by the informant who is the eye-witness of the incident. The presence of the present appellant is not substantiated by the other eye-witnesses by calling them for the T.I. parade, therefore, the prosecution case becomes doubtful as to the involvement of the present appellant. As far as the identification by the injured is concerned which is also doubtful as the photographs of the appellant was shown to her. Now, investigation is already completed and charge-sheet is filed, mere criminal antecedents are not sufficient to curtail the liberty of the present appellant. Considering the fact that now investigation is already completed and considering the nature of the evidence collected during the investigation, the appellant has made out the case for grant of bail. Admittedly, the trial Court has not considered this aspect while rejecting

the application for grant of bail, therefore, interference is called for.

Accordingly, I proceed to pass following order :

- (i) The appeal is allowed.
- (ii) The order dated 30/09/2023 passed by the Special Judge and Sessions Judge, Washim in Special Atrocity Case No.17/2023, is hereby quashed and set aside.
- (iii) The appellant – Atal Kumar @ Guddu Kumar s/o Kashinath Singh Yadav in connection with Crime No.857/2022 registered at police station Washim City, District Washim for the offence punishable under Sections 307, 120-B read with Section 34 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (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 the concerned police station twice in a month i.e. on 1st and 15th day of every month and the Investigating Officer shall record his presence.

(v) The appellant shall furnish his Cell phone number and address with the address proof as well as the names of his two relatives with their address proof, before the Investigating Officer.

(vi) The appellant shall further record his presence before the Police Station Officer, Police Station Davath, District Rohtas (State – Bihar).

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

(viii) Contravention of any of the conditions would lead to cancellation of bail.

10. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)

**Divya*