



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

CRIMINAL APPEAL NO.758 OF 2023

Shri Sandip s/o Laxman Thakare
Aged about 31 years,
Occupation – Driver,
R/o Borala, Tahsil Malegaon,
District Washim

...APPELLANT

VERSUS

1. The State of Maharashtra,
through Police Station Officer,
Police Station Jaulka,
Tahsil Malegaon, District Washim
2. Smt. Leelabai w/o Vishwas Kambale,
Aged about 55 years,
Occupation – Labour,
R/o. Borala, Tahsil Malegaon,
District Washim

...RESPONDENTS

Mr. M.N. Ali, Advocate a/w Mr. Raju Kadu, Advocate for the appellant.
Mr. U.R. Phasate, APP for the State.
Mr. PS. Wathare, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : MARCH 12, 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. The appellant has challenged the order dated 07/10/2023 whereby the Special Judge and Additional Sessions Judge, Washim has rejected the bail application of the appellant bearing Criminal Bail Application No.302/2023.

3. The appellant/accused Sandip Laxman Thakare is arraigned as an accused in connection with Crime No.41/2023 for the offence punishable under Sections 302, 364 and 120-B of the Indian Penal Code and Sections 3(2)(va), 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Atrocities Act' for short).

4. The crime is registered on the basis of report lodged by the wife of the deceased namely Leelabai Vishwas Kamble on an allegation that her husband Vishwas was abducted on 18/02/2023 around 2.00 p.m. and after few hours his dead body was found. The cause of death was strangulation with the aid of ligature. It is alleged that in the year 2022, the Gram Panchayat election was held in which the informant's husband got elected as a member and then he became UpSarpanch of the village. There was a political rivalry between her husband and the group of Wankhede family on the other hand. Since four brothers namely Keshav Wankhede, Ramchandra Wankhede, Shamsunder

Wankhede and Namdeo Wankhede were annoyed against the deceased Vishwas. On 18/02/2023 around 2.00 p.m. the informant had gone with her husband to the dispensary. On their return journey at about 3.30 p.m. deceased went to the side for urination. Within two minutes, the informant heard shouts from that side and she witnessed that three persons have forcefully made her husband to sit in a white coloured car and took him away. They threw some articles of the deceased on the road while leaving the place. Some of the village boys also seen the occurrence and noted registration number of the said car. After sometime, the informant/wife learnt that her husband was found dead. Hence, she lodged the report against these four Wankhede brothers. The police have recorded the relevant statements of the witnesses, seized some articles, collected CDR and on completion of investigation filed the charge-sheet. The name of the present appellant revealed during the investigation alleging that he is the conspirator and the other co-accused deputed him to see the movements of the deceased and present appellant used to inform the co-accused regarding the whereabouts of the deceased.

5. Learned Counsel for the appellant submitted that except the statement of one witness namely Raju Tukaram Kamble there is no other material to connect the present appellant with the alleged offence. He

submitted that the another co-accused Keshav Narhari Wankhede and Datta Kundalik Dukare both are released on bail by the Division Bench of this Court against whom the similar allegations is levelled. He further submitted that the trial Court has rejected the application for grant of bail observing that there is a call records which reveals the involvement of the present appellant in the alleged offence as a conspirator. In fact, the person with whom the calls are exchanged allegedly, they are already released on bail by the Division Bench of this Court. The role of the present appellant is similar to them, and therefore, on the ground of parity also the present appellant deserves to be released on bail.

6. He submitted that now investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, he be released on bail.

7. Learned Additional Public Prosecutor strongly opposed the application and submitted that not only the statement of Raju Tukaram Kamble but the other statements of the witnesses i.e. the statement of one Dhananjay Ramesh Awgan who is the relative of the accused also disclosed the involvement of the present appellant to the extent that the present appellant is the conspirator and was keeping watch on the deceased and was giving information regarding the whereabouts of the deceased. He further submitted that during the investigation the CDR

reports are collected by the Investigating Officer which shows that the location of the co-accused namely Gunwanta Laxman Mahalle and the present appellant is same i.e. Gat No.249 at post Kinhiraja at about 15:26:18 to 16:26:08. It is the same place from which the deceased was abducted. Considering the *prima facie* material against the present appellant his role is not similar to the co-accused. In view of that, the appeal deserves to be rejected.

8. Learned Counsel for the informant reiterated the same contention and submitted that there is a political rivalry between the deceased and the co-accused. Several crimes are registered against the co-accused on the basis of report lodged either by the deceased or by his wife. Thus, previous enmity reveals from the various reports filed. The intention and motive of the co-accused reveals from the investigation papers. As far as present appellant is concerned the specific role is attributed to him. In view of that, the appeal deserves to be rejected.

9. I have heard learned Counsel for the parties. Perused the investigation papers from which it reveals that on 18/02/2023 the deceased was abducted by the co-accused and thereafter he was found dead. The submission of the learned Counsel for the appellant is that the similar role is attributed to the present appellant and the co-accused Nilesh as well as Datta who are already released on bail by the Division

Bench of this Court whereas learned Additional Public Prosecutor submitted that the role of the present appellant is not similar as the location of the present appellant is found in Gat No.249. It is the same place from which the deceased was abducted by the co-accused. He further invited my attention towards the CDR reports and pointed out that there was continuous call between the present appellant and other co-accused.

10. On perusal of the FIR indicates that the name of the present appellant is not mentioned. The statements of two witnesses shows the role of the present appellant. Similar role is attributed to one Nilesh Vishnu Wankhede @ Golu who is already released on bail by the trial Court. The prosecution has also recorded the statements of the witnesses. According to the said statement, the role attributed to the present appellant is that he was observing the deceased and keeping watch on him and was informing about the same to the other co-accused. Admittedly, the role of the present appellant is not in abduction or in an incident of murder. The alleged role is attributed to the co-accused Namdeo. Perusal of the postmortem report indicates that cause of death is strangulation and ligature marks was present on the neck besides the corresponding injuries and abrasion. The ligature was seized at the instance of the co-accused Namdeo. The prosecution has also

collected call details of the present appellant which reveals that on the date of incident there was call between him and Keshav, Ramchandra, Nilesh and Datta. Said Ramchandra, Nilesh and Datta are already released on bail. On the basis of CDR it has been submitted that the appellant was in constant touch with the co-accused and thus, he was a part of the criminal conspiracy. Though tower location was collected and it shows the location of the present appellant but the spot panchnama nowhere shows that the deceased was abducted from the spot which is shown in the tower location. The prosecution has pointed out to the statement to say that on the day of occurrence, the present appellant was present along with the co-accused however, this statement is not substantiated by any other material. Considering the fact that the co-accused to whom the similar role is attributed is already released on bail and considering the statement only limited role is attributed to the present appellant. On the ground of parity, present appellant is also deserves to be released on bail.

11. Merely because the CDR reports showing the communication between the present appellant and other co-accused is not sufficient to show his involvement in the conspiracy. Admittedly, no direct evidence would be available to connect the present appellant to show his role in the conspiracy however, except the two statements there

is no other material to show that the present appellant along with the other co-accused meet somewhere and he was a part of the conspiracy. Of-course it is the matter of evidence which will show that whether the appellant was a part of the conspiracy or not. At this stage, considering the role of the present appellant and the similar role is attributed to the co-accused who is already released on bail, present appeal deserves to be allowed by imposing certain conditions. In view of that, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Special Judge and Additional Sessions Judge, Washim dated 07/10/2023 in Criminal Bail Application No.302/2023 is hereby quashed and set aside.
- (iii) The appellant - Shri Sandip s/o Laxman Thakare in connection with Crime No.41/2023 for the offence punishable under Sections 302, 364 and 120-B of the Indian Penal Code and Sections 3(2)(va), 3(2)(v) 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.50,000/- (Rs. Fifty thousand) with one surety in the like amount.

(iv) The appellant shall attend the concerned police station on every alternate Monday between 10.00 a.m. and 1.00 p.m. till the culmination of the trial.

(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 furnish his Cell phone number and address along with the address proof before the concerned Court.

(vii) The appellant shall not enter in the vicinity of village Borala, Tahsil Malegaon, District Washim till culmination of the trial.

12. The appeal is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*