



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

CRIMINAL APPEAL NO.771 OF 2023

Aman Khan Ahemad Khan
Aged about 20 years,
Occupation – Labour
R/o Near Dr. Matte Hospital,
Naginabag, Chandrapur

...APPELLANT

VERSUS

1. The State of Maharashtra,
through P.S.O., Padoli,
Chandrapur
2. Bhaskar Shankar Nagarkar
Aged about 45 years,
Occupation – Agriculture,
R/o. Juni Padoli,
Tah. and District Chandrapur

...RESPONDENTS

Mr. M.N. Ali, Advocate for the appellant.
Ms M.A. Barabde, APP for the State.
Ms Kirti Deshpande, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 2, 2024.

ORAL JUDGMENT :

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

2. Being aggrieved and dissatisfied with the order passed by the Special Judge and Additional Sessions Judge, Chandrapur in Criminal Bail Application No.469 of 2023 by which the application for bail is rejected. This appeal is preferred by the appellant for grant of bail under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. The appellant came to be arrested on 19/06/2023 in connection with Crime No.187 of 2023 registered at police station Padoli District Chandrapur for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and Section 3(2)(5) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the Atrocities Act' for short). The accusation is on the basis of report lodged by Bhaskar Shankar Nagarkar on an allegation that on 18th June, 2023 one driver from the brick furnace namely Raju Kannake came to his house and informed him that he had seen the dead body lying in the ash, besides the bushes and towards the road. Therefore, he immediately rushed to the spot of incident with one Bapu Pise and witnessed that there was a dead body lying in agriculture land of Atul Chillarwar, near the ash pipeline. He immediately informed the incident to the Padoli police station, police came to the spot of incident and examined the dead body and found that it is the dead body of 20 years old boy who died before one or two days,

his face was disfigured and body was swollen. The police found one injury behind his head and they also found a mobile phone in his pocket. On verifying the mobile phone, the identification of the deceased was revealed as Vishal Patil. Accordingly, police registered an accidental death and dead body was sent for the postmortem examination. During investigation, it revealed that the present appellant was lastly seen with the deceased and thereafter dead body of the deceased was found. On the basis of the statements of the witnesses, appellant was arraigned as an accused and after completion of the investigation charge-sheet was filed.

4. Learned Counsel for the appellant submitted that except the statements of the witnesses that the present appellant was found along with the deceased lastly and thereafter dead body was found. There is no other material to connect the present appellant with the alleged offence. He submitted that the evidence as regards to the last seen is a very weak type of evidence. Moreover, there is a long gap between the last seen and the finding of the dead body, therefore, there is a no nexus between the two incidents. Besides the last seen evidence, no other material to connect the present appellant with the alleged offence. Now, investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, the appellant be released on bail by setting aside the order of the trial Court.

5. Learned Additional Public Prosecutor strongly opposed the application on the ground that the statements of the witnesses clearly shows that the deceased and the present appellant and one more co-accused were lastly seen in the company of the present appellant. Thereafter the dead body of the appellant was found. The prosecution case is rested on the circumstantial evidence and besides the circumstance of last seen, the material which is collected during the investigation by the Investigating Officer is the seizure of the weapon at the instance of the present appellant. Thus, the circumstantial evidence at this stage, is sufficient to show the involvement of the present appellant, and therefore, the application deserves to be rejected.

6. Learned Counsel for respondent No.2 endorsed the same contentions and she submitted that at this stage, *prima facie* material requires to be looked into which shows the connection of the present appellant with the alleged incident as the deceased lastly seen alive in the company of the present appellant and thereafter his dead body was found. So there is a nexus between the finding of the dead body and the lastly seen evidence. Though investigation is completed and charge-sheet is filed, if present appellant is released on bail there is every likelihood of fleeing away from the justice, and therefore, the application deserves to be rejected.

7. Having heard learned Counsel for the parties. Perused the investigation papers. Admittedly, the FIR is lodged against the unknown persons. The identification of the dead body was revealed as mobile phone was seized from the person of the deceased. During investigation the Investigating Officer has recorded the statements of two witnesses namely Mohammad Shoeb Hasham Sheikh from whose statement it revealed that he has witnessed the present appellant along with the deceased and thereafter the deceased was found dead. As per his statement, on 16/06/2023 at about 7:30 p.m. he has seen the deceased and the present appellant and dead body of the deceased was found on 18/06/2023 at about 12.00 p.m. Thus, the dead body was found after two days. Besides the last seen material, incriminating article is seized at the instance of the present appellant. However, no blood stains are found on the said weapon. It is well settled that when case is based on the circumstantial evidence motive assumes importance. In the present case, there is nothing on record to show that there was any type of enmity between the deceased and the present appellant. Moreover, except the last seen evidence, there is no material to show that after the last seen the deceased was seen alive or there was no scope of intervention in between the period. There is no investigation to find out as to exactly when the death of the deceased is caused and by means of what weapons and on which date and time. Admittedly, last seen

together itself is very weak type of evidence and would not be sufficient to complete the chain of the circumstances. Considering the fact that there is a long gap between the last seen and the finding of dead body and the possibility of intervention of some other person cannot be ruled out. In view of that and as the investigation is completed, charge-sheet is filed, further incarceration of the present appellant is not required, the appeal deserves to be allowed. In view of that, I proceed to pass the following order :

- (i) The appeal is allowed.
- (ii) The order passed by the Additional Sessions Judge, Chandrapur in Criminal Bail Application No.469/2023 rejecting the bail application of the appellant is hereby quashed and set aside.
- (iii) The appellant - Aman Khan Ahemad Khan in connection with Crime No.187 of 2023 registered at police station Padoli District Chandrapur for the offence punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code and Section 3(2)(5) 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 not leave the jurisdiction of Chandrapur without prior permission of the Court.

(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 Investigating Officer.

8. The appeal is disposed of accordingly.

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

(URMILA JOSHI-PHALKE, J.)

**Divya*