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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.795 OF 2023

Gajanan @ Gaju s/o Suryabhan Khadse,
Aged about 38 Years,
Occupation : Agriculturist,
R/o Selu (M), Taluka Hinganghat,
District Wardha.

..... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Hinganghat, Taluka Hinganghat,
District Wardha.
2. Manjusha @ Manisha Arvind Uike,
Aged about 28 Years,
Occupation : Household,
R/o Selu (M), Taluka Hinganghat,
District Wardha.

.... RESPONDENTS

Mr. Firdos Mirza, Advocate for appellant.
Mr. A. B. Badar, APP for respondent No.1/State.
Ms. Jayanti A. Deshpande, appointed Advocate for respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19.03.2024

ORAL JUDGMENT :

1. **Admit.**
2. Heard learned Counsel Mr. Firdos Mirza for the
appellant and learned APP Mr. Badar for the State and learned
appointed Counsel Ms. Deshpande for the respondent No.2.

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3. By this appeal, the appellant has challenged the order passed by the learned Special Judge under the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act by which the application of the present appellant for grant of bail under Section 439 of the Code of Criminal Procedure below Exhibit 52 is rejected.

4. The accusation against the present appellant is on the basis of report lodged by the informant on an allegation that the deceased is the brother-in-law of the informant and was involved in various crimes registered at Hinganghat Police Station under Section 379 of the Indian Penal Code and under the provisions of 307, 4/25 of the Arms Act and under Section 397, 394 of the Indian Penal Code. Recently, he was released from the jail on 01.08.2023 i.e. prior to lodging of the FIR. On 09.08.2023, when her brother-in-law was returning from the agricultural field along with her husband. The motorcycle of one Subhash Madavi was fallen on the ground, due to push of the deceased. Thereafter, the deceased came at home. At the relevant time, at about 10.00 p.m., the husband of the informant received a call wherein the whereabouts of the deceased was asked, as the phone call was on speaker deceased had heard the communication, co-accused Sharad Satpute was asking where is deceased and asked him to come at bus stop. After hearing this,

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the deceased immediately proceeded to the bus stop, he was followed by the husband of the informant as well as father-in-law and mother-in-law of the informant. The informant has also followed them and witnessed that 18-20 people were chasing the deceased including the present appellant and other co-accused. They caught him and assaulted by means of wooden sticks and wooden log. Due to the assault, the deceased has sustained the grievous injury and succumbed to the death. On the basis of the said report, police have registered the crime against the present appellant and other co-accused under Sections 143, 147, 148, 302, 323, read with Section 149 of the Indian Penal Code and under Section 135 of the Maharashtra Police Act and Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

5. After registration of the crime, the appellant approached to the learned Special Court for grant of bail. The same was rejected by the Special Court observing that there is a *prima facie* case against the present appellant against whom the allegation was made that he assaulted the deceased by means of wooden stick on the vital part of the body.

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6. Being aggrieved and dissatisfied with the said order of rejection of the application, the present appeal is preferred under Section 14-A of the Act of 1989.

7. Learned Counsel Mr. Mirza for the appellant submitted that from the recitals of the FIR itself it reveals that the deceased was of a criminal background and various offences are registered against him. At the time of the incident 18 – 20 villagers have chased the deceased and in the said incident the deceased was assaulted by the villagers and his death is caused. He submitted that the postmortem report reveals the cause of the death is due to the head injury. The injury which was caused on the head is not attributed to the present appellant, but it was to the co-accused. As far as the present appellant is concerned, the allegation him is that he has assaulted by means of a stick on the chest and abdomen portion of the deceased. Admittedly, the death of the deceased is not due to the injuries sustained either on the chest or on the abdomen. Now the 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.

8. Learned APP strongly opposed the appeal on the ground that the intention of the present appellant is crystal clear from the statements of the informant as well as the eye

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witnesses which shows that with an intention to cause the death he has assaulted the deceased on the vital part of the body. *Prima facie* case is made out against the present appellant though investigation is completed and charge-sheet is filed. Considering the nature of the offence, the learned trial Court rightly rejected the application and no interference is called for.

9. Learned Counsel appearing for the respondent No.2 endorsed the same contention and submitted that considering the statement of the eye witnesses *prima facie* case is made out against the present appellant, the application deserves to be rejected.

10. After hearing both the sides and on perusal of the investigation papers, it reveals that at Hinganghat Police Station in all six offences are registered against the deceased under Section 307 and 4 and 45 of the Arms Act, 397, 394 of the Indian Penal Code. The investigation papers also shows that prior to the incident on 01.08.2023, the deceased was released on the bail as he was involved in the crime of theft. From the statement of the informant also it reveals that several offences are registered against him. As far as the incident is concerned, the statement of the informant shows that on 09.08.2023 when the deceased was at home, she received a phone call of one Prakash Khadse and Sharad Satpute, who have called the

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deceased at bus stop therefore, deceased went at the bus stop. The deceased was followed by her father-in-law and husband. She also followed them along with her mother-in-law and witnessed that 30 – 35 people were gathered at the bus stop and they were chasing the deceased. The deceased was attempting to run here and there to save himself from the clutches of 30 – 35 persons. As present appellant and the other three accused were known to the informant, she has stated their names. As per her allegations, present appellant assaulted the deceased by means of stick on his chest and the abdominal portion. The statement of the other witnesses i.e. father of the deceased and mother of the deceased are also recorded during the investigation. They have also attributed the same role to the present appellant. The dead body of the deceased was forwarded to the postmortem report. From the postmortem report, it reveals that deceased has received as many as 12 injuries. As far as the injuries on chest are concerned, the deceased has sustained three injuries on the chest and three injuries on the abdominal portion. As far as cause of death is concerned, the Medical Officer has opined that the death could be due to the head injury. Thus, admittedly, head injury is not attributed to the present appellant. Considering the statement of the witnesses, it reveals that not only the present appellant but in all 30 – 35 people have assaulted the deceased and

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therefore, he has sustained as many as 12 injuries on his person. During the investigation, the Investigating Officer has seized the said weapons of the offence. The said weapons are also forwarded to the Medical Officer for obtaining the opinion. The Medical Officer has given his opinion along with the diagram of the weapons. Admittedly, the weapons like sticks are used in the alleged incident. The death of the deceased is not caused due to the injuries on the chest or injuries on the abdominal portion. But, it is specifically opined that the death is due to the head injury. Considering the fact that the head injury is not attributed to the present appellant, but it is attributed to the co-accused. Now, the investigation is completed and charge-sheet is filed. Considering the circumstances under which the alleged incident has taken place wherein 30 - 35 people have assaulted the deceased, due to which his death is caused. In view of that, the appeal deserves to be allowed by imposing certain conditions on the present appellant. Accordingly, I proceed to pass following order.

ORDER

- (i) The appeal is allowed.
- (ii) The order dated 30.10.2023 passed by the learned Special Judge rejecting the bail application is hereby quashed and set aside.

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(iii) The appellant **Gajanan @ Gaju s/o Suryabhan Khadse** shall be released on bail in connection with Crime No.941/2023 registered under Section 143, 147, 148, 302 and 323 read with Section 149 of the Indian Penal Code, Section 135 of the Maharashtra Police Act and Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall not enter into the village Selu / Murpad, Taluka Hinganghat, District Wardha, till culmination of the trial.

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

(vi) The appellant shall attend the proceedings of the Court at Hinganghat without seeking any exemption unless there are exceptional circumstances.

The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)