



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

CRIMINAL APPEAL NO.802 OF 2023

Devanand s/o Tulsiram Dhande
Aged about 45 years,
Occupation – Service,
R/o Lanjala, Tq. Kuhi,
District Nagpur

...APPELLANT

VERSUS

1. The State of Maharashtra,
through P.S.O., P.S. Kuhi,
District Nagpur
2. Sau. Kavita w/o Bandu Ghajbhiye
Aged about 42 years,
Occupation - Housewife,
C/o. Prakash Mehar, Tq. Kuhi,
District Nagpur

...RESPONDENTS

Mr. A.S. Band, Advocate for the appellant.
Ms M.H. Deshmukh, APP for the State.
Mr. F.N. Haidari, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : FEBRUARY 13, 2024.

ORAL JUDGMENT :

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

2. By preferring this appeal, the appellant has challenged the order passed by the Additional Sessions Judge-9 and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Nagpur in Criminal Bail Application No.2740/2023 dated 14/12/2023 by which the application of the appellant for grant of bail is rejected.

3. The accusation against the present appellant is on the basis of report lodged by Kavita Bandu Gajbhiye who is the daughter of the deceased alleging that her father Manohar Timanji Masurkar residing alone at Lanjala and doing the work of grazing the she-goats. He has given an amount of Rs.1,00,000/- to the present appellant on interest. Though the deceased has demanded the said amount from the applicant but he has not paid the amount. On 09/09/2023, she had been to meet her father at Lanjala, on that day at about 8.00 a.m. her father went along with the present appellant on his motorcycle and not returned back. She made an inquiry with the present appellant and he informed that he has dropped her father at Surgaon. She has also lodged the missing report initially and thereafter the report stating that the present applicant has committed the murder of her father as dead body of her father was found on 15/09/2023. On the basis of said report, police have registered the crime against the present appellant.

4. After registration of the crime, present appellant approached to the trial Court by filing an application bearing No.2740/2023 for grant of bail. Learned trial Court has considered the material and observed that from the charge-sheet it revealed that the incriminating articles are recovered at the instance of the present appellant and there is a *prima facie* material against the present appellant and rejected the bail application.

5. Being aggrieved and dissatisfied with the said order, present appeal is preferred by the appellant under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

6. Learned Counsel for the appellant submitted that except the last seen there is no other material to connect the present appellant with the alleged offence. Moreover, the deceased was last seen with the present appellant on 09/09/2023 and dead body was found thereafter on 15/09/2023 that is after a long gap. The law is settled regarding the last seen evidence which is a weak type of evidence. Considering the long gap between the two incidents there is a possibility of intervention of any third person. Moreover, the cause of the death of the deceased is also not ascertained by the Medical Officer, therefore, the incriminating article which is recovered at the instance of the present appellant is also not in connection with the alleged crime. Now, the investigation is

completed and charge-sheet is filed. Further incarceration of the present appellant is not required. Learned trial Court has not considered that the last seen evidence is a very weak type of evidence and there is no material to connect the present appellant with the alleged offence and erroneously rejected the application.

7. *Per Contra*, learned Additional Public Prosecutor strongly objected the appeal on the ground that the footwear of the deceased was seized at the instance of the present appellant. Present appellant was seen along with the deceased lastly and thereafter the deceased was found dead. At this stage, *prima facie* material against the present appellant shows his involvement in the alleged offence. Though investigation is completed considering the grievous nature of the offence, the appeal deserves to be dismissed.

8. Learned Counsel for respondent No.2 also endorsed the same contention and submitted that *prima facie* material is against the present appellant to show his involvement. In view of that, appeal deserves to be dismissed.

9. I have heard learned Counsel for the parties. Perused the entire investigation papers with the help of learned Additional Public Prosecutor and learned Counsel for the parties. Admittedly, initially the missing report was filed by the daughter of the deceased. The FIR is

lodged after the dead body of the deceased was found on 15/09/2023. The motives suggested against the present appellant that there was the hand loan transaction between the deceased and the present appellant and deceased was demanding the said amount and therefore, the appellant has committed his murder by taking him along with him. To substantiate the said contention, the prosecution relied upon the circumstances that is the last seen. The statements of the witnesses recorded during the investigation shows that on 09/09/2023, deceased left the village along with the present appellant and thereafter deceased was found dead. During investigation, the memorandum statement of the present appellant was recorded and at his instance one rope and one footwear of the deceased was seized. As far as the homicidal death is concerned, the Medical Officer has not given the opinion that death of the deceased is caused due to strangulation or it is a homicidal death. Thus, apparently there is no material on record except the last seen to connect the present appellant with the alleged offence. Moreover, now investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. Learned trial Court has not considered this fact that cause of death itself is not on record to show that it is a homicidal death. The evidence in the nature of last seen is very weak type of evidence and there is a long gap between the last seen and finding of the dead body. Considering the nature of the evidence

collected during the investigation and now investigation is completed and charge-sheet is filed, further incarceration of the present appellant is not required. In view of that, order passed by the learned trial Court rejecting the bail application deserves to be quashed and set aside. 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-9 and Special Judge, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Nagpur in Criminal Bail Application No.2740/2023 dated 14/12/2023 rejecting the bail application of the appellant is hereby quashed and set aside.
- (iii) The appellant - Devanand s/o Tulsiram Dhande in connection with Crime No.601 of 2023 registered at police station Kuhi District Nagpur for the offence punishable under Sections 302 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 attend the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(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.

10. The appeal is disposed of accordingly.

11. The trial Court shall not be influenced by the observations made by this Court which is only for the purpose of bail.

(URMILA JOSHI-PHALKE, J.)

**Divya*