



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 836 OF 2024

1] Vishal Vasantryao Patil
Age-24 years, Occupation-Labour,
R/o. Junna,Tq.Basmat Dist.Hingoli. ...Appellant

VERSUS

1] Anil Sakharani Dalvi
Age-52 years, Occupation-Agri,
R/o. Junna,Tq.Basmat Dist.Hingoli.

2] The State of Maharashtra
Through P.I.Kurunda P.S.
in Crime No.28/2024 Dist.Hingoli. ...Respondents

Advocate for Appellant : Mr. Shaikh Wajeed Ahmed.
APP for Respondent/State: Mrs. Ashlesha S.Deshmukh
Advocate for Respondent No.1 : Mr. Kiran P.Rathod.

CORAM : SHAILESH P. BRAHME, J.

DATE : 16th APRIL 2025

FINAL ORDER :

1. Heard both sides.
2. This appeal is directed against order dated 09.05.2024 passed below Exhibit-7 by Special Judge and Additional Sessions Judge, Basmathnagar, District Hingoli in Special Case No. 24 of

2024 granting regular bail to the Respondent No.1 in C.R No. 28 of 2024 registered with Police Station, Kurunda, Tq, Basmath, Dist. Hingoli for offence punishable under Sections 302,120-B, 143, 147,148,149,504, 506, 109, 114 of I.P.C and 3(2)(s),3(2)(va) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. Appellant lodged a report on 24.01.2024 who is the neighbourer of deceased Rahul Narayan Gawali. Appellant and co-accused were harassing the deceased and demanding money on the pretext that he was residing in the premises situated in the land of co-accused Sunita Shinde and her members of the family. It is alleged that accused were in habit of threatening and extracting money from innocent people. On 24.01.2024 appellant and co-accused had been to the place of the deceased and abused him for paying them money. He was being threatened and manhandled by them. On the same day, near Maharashtra Gramin Bank when deceased had been to the bank for some transaction, appellant was present at the spot and called other co-accused. It is further alleged that appellant incited and instigated co-accused to beat him. In response to that Sunita Shinde and Krishna Shinde pinned him down and Kanhaiya Shinde inflicted blow cutting throat by dagger. Thereafter other co-accused kicked him and threatened him. He succumbed to the injuries due to severe

bleeding.

4. Respondent No.1 was arrested on 24.01.2024. Charge-sheet was filed on 31.03.2024. Perusal of the impugned order shows that the statements of the eye witnesses and statements under Section 164 of Cr.P.C (Section 183 of B.N.S.S) were not considered. In paragraph no. 13 of the impugned order it is observed that no specific role was attributed to the appellant. It is further recorded that due to the dispute over the land, the incident had occurred.

5. Learned counsel for the appellant submits that Respondent No.1 is the abettor and played a major role. He was present at the relevant time and he was instigating others. It is submitted that clinching material was overlooked by the Sessions Judge in the form of statements of eye-witnesses and statement under Section 164 of Cr.P.C.(Section 183 of B.N.S.S). It is further submitted that during the course of investigation, call data report (C.D.R) was secured showing constant communication of the Respondent No.1 with the other co-accused. It is further submitted that Respondent No.1 has been pressurizing the informant.

6. Learned APP tenders on record the original papers. She would submit that Respondent No.1 was present at the relevant time and he

had bank transaction. She would advert my attention to statements of the eye-witnesses and panchnama of transcription of CCTV footage. She would submit that the probable defence of *alibi* of the Respondent No.1 is improbable because the distance between place of occurrence and Sharada Petrol pump, Borala was of 8 kms. It is possible to travel the distance after committing the offence.

7. Learned counsel Mr.Rathod appearing for Respondent No.1 supports impugned order. He would submit that the main perpetrators are behind bars and allegations against his client are venial in nature. He would submit that panchnama of CCTV footage does not help the appellant. It is vehemently submitted that Respondent No.1 at the relevant time, was at petrol pump. He would submit that there are no allegations of breach of conditions.

8. I have considered rival submissions of the parties. I have also gone through order passed by my predecessor on 15.10.2024. In pursuance of that affidavit-in-reply is filed by the Respondent No.2/state. A CCTV footage of the camera installed at Sharada Petrol pump, Borala can be gone into during the trial. There is very marginal difference of time and it is possible for the Respondent No.1 to raise defence of *alibi*. At this juncture of the proceedings, it would not be

appropriate to comment upon the it.

9. First information report and the statements of the eye-witnesses clearly discloses that Respondent No.1 was present on both the incidents of 24.01.2024. I have gone through the statements of eye-witnesses Ramdas, Shaikh Ganibhai, Shaikh Annis and Karan. Their statements under Section 164 of Cr.P.C (Section 183 of B.N.S.S) have also been recorded. Appellant is stated to have instigated other co-accused for assaulting him. He was being abused on caste also within public view. Though actual fatal blow was at the instance of Kanhaiya with dagger, Respondent No.1 candidly aided co-accused to commit assault. This aspect of the matter is totally overlooked by Learned Judge.

10. The presence of the Respondent No.1 near bank is apparent from bank transaction receipt secured during the investigation. Spot panchnama records presence of his two-wheeler. C.D.R collected during the investigation shows his mobile conversation with co-accused at the relevant time. There is cogent material against the Respondent No.1 indicating his incriminating role. This overwhelming evidence has not been discussed by the Learned Judge though charge-sheet and police papers were before the Court.

11. The Respondent No.1 was supporting the co-accused and alongwith them pressurizing the deceased for extracting money. Appellant had no reason to make allegation against the Respondent No.1 as well as other co-accused. It is stated in the paragraph nos.13 and 14 of the affidavit-in-reply by the Respondent No.2 that C.R No. 311 of 2024 was registered against the accused for threatening the witnesses. It is abuse of the liberty granted to the appellant. Considering the overwhelming material against the Respondent No.1, I am of the considered view that impugned order is unsustainable. Hence, I pass following order :

ORDER

1.Criminal Appeal is allowed.

2.Impugned judgment and order dated 09.05.2024 passed below Exh.7 by Special Judge, Basmathnagar, District Hingoli in Special Case No. 24 of 2024 is quashed and set aside.

3.Respondent shall take steps to secure custody of respondent no.1.

[SHAILESH P. BRAHME, J.]

11. After pronouncement of the operative part, learned counsel for respondent No.1 prays for stay to the operation of order passed by this Court for a period of six (6) weeks.

12. Learned counsel for the appellant vehemently opposes the request.

13. As respondent No.1 desires to approach Apex Court, I am inclined to grant stay for three (3) weeks. However, it is noticed that his son Shubham tried to pressurize the informant and her family members. There are instances of pressure tactics. Therefore, it is desirable that during this period, respondent No.1 shall stay away from Basmathnagar and report his whereabouts to the Investigating Officer.

14. In that view of the matter, there shall be stay to the operation of the execution of the order passed today for the period of three (3) weeks on condition that respondent No.1 shall stay outside of Basmathnagar Taluka during this period and report his whereabouts to the Investigating Officer.

[SHAILESH P. BRAHME, J.]

vsj