



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

28 CRIMINAL APPEAL NO. 1086 OF 2024

1. VINAYAK S/O. GOVINDRAO TEKALE
2. VITTHAL S/O. SHRIDHAR SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND ORS.

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Advocate for the Appellants : Mr. Sachin S. Deshmukh
APP for Respondents/State : Ms. Ashelsha S. Deshmukh
Advocate for the Respondent No.3 : Mr. S.S. Thombre

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CORAM : Y.G. KHOBRAGADE, J.
RESERVED ON : 17.02.2025
PRONOUNCED ON : 25.02.2025

ORDER:-

1. By the present appeal under Section 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 r/w Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Appellants/Accused takes exception to the order dated 13.12.2024 passed by the learned Special Court (Atrocities) in Special (Atro) Case No.131/2024, whereby rejecting the application for bail in Crime No.496/2024 for the offence punishable under Section 107, 106(1), 238 read with 3(5) of Bhartiya Nyay Sanhita, 2023 (for short BNS) and Section 3(1)(v), 3(1)(vi) of the Scheduled Caste and

Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short the SC & ST Act).

2. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. It is a matter of record that, on 30.07.2024, the Informant Shri Sahdev Ganpati Tarkase lodged a report with MIDC Police Station, Latur alleging that, his nephew Arvin son of Rajebhau Khope (hereinafter referred as deceased) was pursuing studies in 7th Std., in Swami Vivekanand Secondary School, MIDC Latur. The said school is attached with hostel facility. The deceased had undergone surgery for Appendix. On 24.07.2024, the deceased left the hostel without informing anyone and visited his native place. This fact was informed by mother of deceased to the informant. On 27.07.2024, the deceased-Arvin visited the house of the informant and on same day, he (Informant) received a phone call from Smt. Damyanti, the mother of deceased, who told him about sending the deceased at his home after visiting the hospital. Since, school was closed on account of Saturday and Sunday, therefore, deceased Arvin halted in his house for two days. On 29.07.2024 at about 8.30 p.m., his son dropped the deceased-Arvin in the school but subsequently he received a phone call from Smt. Damyanti, mother of the deceased, who informed him about receiving a phone call from class teacher of deceased stating about blood is oozing from appendix surgery

wound, hence, Arvin was taken to the hospital but Medical Officer was not available. Since, he (Informant) was busy in his work therefore he sent his son Rohan to see Arvin in his school. Thereafter, Rohan, the complainant's son visited the school of Arvin at about 3.30 pm to 4.00 pm and he came to know that, Arvin is not present in the school. When his son inquired with the Supervisor of the hostel at that time his son was informed that Arvin has fled from the hostel by jumping the compound wall. Therefore, he inquired with Smt. Damyanti, the mother of victim about visit of Arvin at the house. Thereafter, he came to know that, Arvin did not visit at his native place. Thereafter, he made an inquiry with the relatives about visit of Arvin but he was not traceable. In the meanwhile, at about 11.00 pm., the informant with his relatives visited the school of Arvin but the Appellant No.1-Vinayak Govindrao Tekale had informed him on phone about suicide committed by Arvin in the hostel premises. When he tried to entered into the hostel the Watchman stopped him at the gate and restrained him to enter into hostel but the informant forcefully entered in the hostel. After the informant entered into the hostel he observed about gossiping by the students on second floor of hostel regarding whereabouts of Arvin but one student disclosed him about presence of Arvin (deceased) in office room of the hostel. Therefore, he visited said office but it was closed and after he opened the latch of the door he found about one boy lying on the floor covered with the blanket. The

informant further alleged that, after he removed the blanket, he noticed that, Arvin was already dead. His tongue was between the teeths, eyes were closed. On the basis of said complaint FIR bearing Crime No.0496/2024 was registered on 30.07.2024 with MIDC Police Station against the Appellants for the offence punishable u/s. 3(5), 238, 106(1) of BNS. During course of investigation it was revealed that, the deceased belonged to SC community, therefore, considering the allegations made in the Report as well holding both the Appellants responsible for suicidal death of the deceased, offences under Section 3(1)(v), 3(1) (vi) of the SC & ST Act came to added.

3. The Investigating Officer Ranjit Sawant, Sub-Divisional Police Officer conducted the investigation. Both the Appellants were arrested on 01.08.2024 and they were produced before the Special Court. Both the accused were remanded in PCR. On 06.08.2024, the learned Magistrate passed an order and remanded both the Accused to the MCR. The Investigation Officer visited the spot of incident and drawn spot panchanama, Inquest Panchanama on dead body was done and the dead body of the deceased was referred to post mortem. The Investigating Officer has recorded statements of witnesses namely, Anita Tarkale, Aniket Ugalmugale, Rameshwar Sabne, Mahesh Rapanwad, Yash, Athawale, Rudraksh Hotkar, Sujit Pole, Anita Borade (Nurse) attached with Rajmata Jijau Adiwasi Boys

and Girls Hostel, Dnyandeo Madibone, Amol Sakhre, Madhav Shinde, Krishna Kendre, Shivraj Mote, Damyanti Khope, Suraj Tarkase, Rohan Tarkase, Sanjay Biradar, Govind Shinde etc. The Investigating Officer collected post mortem report and after completion of investigation the I.O. filed a charge-sheet against the present Appellants.

4. The Appellants filed Exh.11 in Special (Atro) Case No.131/2024 under Section 438 of the BNSS, 2023 and prayed for bail in Crime No.496/2024 registered with MIDC Police Station, Latur. On 13.12.2024, the learned Additional Sessions Judge, Latur, passed the impugned order holding that, previous application for bail before filing of charge-sheet has been rejected on merit. There are no substantial changes subsequent to filing of the charge-sheet. Being aggrieved by said order, the Appellants have invoked the jurisdiction of this Court under Section 14-A read with Section 483 of BNSS, 2023.

5. The learned counsel appearing for the Appellants canvassed that, while passing the impugned order dated 13.12.2024, the learned trial Court failed to consider the provisions of Section 45 of the BNS Act as well as provisions of S.C. & S.T. Act. It is canvassed that, the FIR does not disclose about abusing the deceased on his caste in public view. Further as per statements of the witnesses, the deceased-Arvin was operated in recent past

for Appendix and blood was oozing from surgical wound. The deceased was always complaining about stomach pain and had also left the hostel without informing to the school and hostel authorities. Further the deceased was not interested to pursue the studies. The material produced on record does not reveal that the accused persons abetted the deceased to commit the suicide. The investigation is over and I.O. has filed the charge-sheet. Therefore, further custody of the present Appellants is not required, hence, prayed for release of the Appellants/accused on bail during the pendency of the trial.

6. It is further canvassed that, the I.O. collected CCTV footage of cameras installed in the hostel and school premises, however, none of the CCTV footage shows that, the Appellants abused the deceased in his caste and instigated him to commit the suicide. The Appellants/Accused are local permanent residents, hence, there is no possibility of them absconding. The Appellants/Accused are ready and willing to abide any terms and conditions which may be imposed by this Court, therefore, prayed for enlarging both the Appellants on bail during the pendency of the trial.

7. The prosecution has filed affidavit in reply of Mr. Ranjit Sawant. The Sub-Divisional Police Officer and strongly opposed the bail application. The learned APP canvassed that, on 01.08.2024, the Appellants/Accused were arrested and initially they were remanded in PCR till 06.08.2024, however,

subsequently, the learned Special Court remanded the Appellants in MCR. During course of investigation, the I.O. recorded the statements of total 24 witnesses and collected CCTV footage of all cameras installed in the school and hostel premises. As per post mortem report, death of deceased was caused due to ligature constriction of neck. The deceased committed suicide in the bathroom of hostel. The Accused persons told the victim as to why he visited the hostel as he is having stomach pain, 'let he go at his native and after the stomach pain is cured he should attend the school. If he does not wish to pursue study let he die at his native, and he should disappear from there. Therefore, the act of the Appellants prompted the deceased to commit suicide, hence, prayed for rejection of the bail.

8. Adv. Thombre, the learned counsel appearing for the Respondent No.3 strongly opposed the bail application on the following grounds:

- i) Smt. Damyanti, the mother of the deceased had informed the Respondent No.3 about receiving a phone call from class teacher of deceased-Arvin complaining bleeding from Appendix surgery wound and he was sent to the hospital but the Medical Officer was not present.
- ii) Mother of deceased had requested the Respondent No.3 to visit the school of the deceased and Shri Rohan, the son of informant had visited the school but the deceased was not found.

- iii) The hostel In-charge informed to Rohan that deceased jumped the compound wall and fled away from the hostel.
- iv) All the relatives searched for deceased-Arvin at bus stop, Railway Station and various other places but he was untraceable. Thereafter, all relatives of deceased visited Swami Vivekanand Madhyamik Vidyalaya but prior to their visit, the Appellants informed the Respondent No.3 on phone that the deceased has committed suicide in the hostel by hanging.
- v) The Watchman of hostel restrained the Respondent No.3 to enter in hostel till arrival of the Appellant No.1.
- vi) As per the statements of witnesses, the Appellant No.1 had told the deceased “as to why he returned from his native, he frequently fall ill due to stomach pain, let he go at his village and die”.
- vii) The Accused No.2 told the deceased “whether his stomach pain is real or he is doing drama” and “if he does not wish to pursue his study let he go at his native and he should not come back and disappear”. Therefore, the act of the present Appellants certainly reveal instigation on their part due to which the deceased committed suicide.

9. The learned counsel appearing for the Respondent No.3 further canvassed that, as per the spot panchanama the size of bathroom is 42x38.

The door of bathroom is of fiber ad-measuring 70x26, having latches and handle in center. As per panchanama of CCTV footage, the CCTV NVR was closed w.e.f. 15.40 hours to 15.57 hours, however, at about 14.54.20 hours the deceased-Arvin entered in hostel by carrying footwear in his hand and at about 14.59.10 hours the deceased was seen while proceeding towards bathroom. Again at about 15.05.35 hours the deceased was seen while proceeding towards bathroom by carrying footwear in his hand. As per post mortem report, the Medical Officer found injuries/ ligature marks around the neck of the deceased. Therefore, the Appellants/accused have committed murder of the deceased and depicted a picture that, the deceased had committed suicide. Therefore, the Respondent No.3 filed Criminal Writ Petition No.1893/2024 before the Division Bench of this Court and prayed for issuance of direction to register a crime for the offence u/s 103 of the BNS 2023 against the present Appellants. Therefore, if the Appellants/Accused are released on bail in that event there is possibility of tampering the witnesses, issuing threats and fleeing away from custody of the Court, hence prayed for dismissal of the appeal.

10. Having regard to the rival submissions, I have gone through the record. On perusal of post mortem Report it appears that, the Medical Officer noted about surgical hypopigmented scar mark over right iliac region, stature-

144 cm. The Medical Officer also found incomplete ligature mark over neck, merging with hairline, absent over posterior region situated at the level of thyroid cartilage. Ligature mark is found dry and reddish brownish. Total neck circumference is 28.5 cm as well as abrasion over right iliac fossa region 2x0.5 cm, dry brownish blackish scab present situated 5 cm obliquely from anterior superior iliac spine, abrasion over left shoulder anteriorly 3x1 cm reddish, multiple abrasions between two scapulas 8x4 cm. The injury nos.1, 2 and 4 to 9 are fresh and injury no.3 is about 3 - 7 days old.

11. Needless to say that, while lodging the FIR, the informant has not alleged about abusement to the deceased in his caste. The FIR does not disclose that, the present Appellants belong to upper caste than the victim. On perusal of FIR, it *prima facie* appears that, the deceased-Arvin was having appendix problem and he was operated for said ailment. Therefore, it appears that he was complaining about stomach pain. It is a matter of record that, prior to 24.07.2024, the deceased-Arvin had left the school and hostel without giving intimation to his school friends and teachers as well as hostel Warden. On 24.07.2024, mother of deceased- Smt. Damyanti made a phone call to the informant asking about sending the deceased to him after attending the hospital. It further appears that, the deceased stayed in the house of complainant on Saturday and Sunday i.e. 25.07.2024 and 26.07.2024.

Thereafter, on 29.07.2024, Master Suraj, the Informant's son dropped the deceased-Arvin in his school to appear for examination. Subsequently, the informant received a phone call from mother of the deceased- Smt. Damyanti informing about receiving phone call from class teacher of Arvin about blood oozing from surgical wound of appendix. The deceased was sent to the hospital but the Medical Officer was not available, therefore, the deceased was taken to the Nurse Ms. Anita Borade.

12. The statement of Ms. Anita Borade (Nurse) shows that, on 29.07.2024 at about 2.20 hours she had contacted the mother of the deceased on cell no.9921777554 and had informed about cleaning of surgical wound of Arvin. At that time, she was informed by mother of deceased that since the deceased may not wish to stay in the hostel, therefore, he might be doing all these activities. So also, in the past the deceased was not willing to stay in the hostel in spite payment of fess. As per the statement of nurse, she talked with the mother of victim for 13 minutes and 9 seconds and after giving understanding to the deceased, she left towards the hall. At about 4.15 hours when she was coming from her resident quarter at that time she noticed that the relatives of deceased-Arvind searching for him. Thereafter, at about 10.30 pm she came to know that, the deceased committed suicide with the help of his shirt by hanging in the bathroom of the hostel.

13. The investigation papers does not reveal that the Investigating Officer seized any suicide note. Merely, the deceased child belonging to SC & ST caste and he has committed suicide in the hostel, it does not *ipso facto* attracts provisions of SC, ST Atrocities Act. The material placed on record, shows that, the deceased was complaining about stomach pain and had left the school and hostel without giving intimation to anyone, on insistence of his mother, he was brought at the hostel. The investigation is over and the I.O. has already filed the charge-sheet against the Appellants/Accused. Therefore, further custody of the Appellants is not required for any interrogation purpose and some time will take place to conclude the trial. Therefore, taking into account the golden rule that, the bail is rule and jail is exception”, the Appellants are entitled for bail during pendency of trial in Special (Atro) Case No.131/2024 arising out of Crime No.496/2024 under Sec. 107, 106(1), 238 read with 3(5) of Bhartiya Nyay Sanhita, 2023 (for short BNS) and Sec. 3(1) (v), 3(1)(vi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 on stringent conditions.

14. In view of above, I am inclined to allow the present appeal and proceed to pass the following order:

ORDER:

- i) The impugned order dated 13.12.2024 passed by the Special Court / Additional Sessions Judge, Latur below Exh.11 in Special (Atro) Case No.131/2024 is hereby quashed and set aside.
- ii) The Appellant No.1- Vinayak Govindrao Tekale and Appellant 2- Vitthal Shridhar Suryawanshi are hereby released on bail during the pendency of trial in Crime No.496/2024 for the offences Section 107, 106(1), 238 read with 3(5) of Bhartiya Nyay Sanhita, 2023 (for short BNS) and Section 3(1)(v), 3(1)(vi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 on execution of PR bond of Rs.50,000/- each with two solvent sureties each in the like amount.
- iii) The Appellants shall not issue threats or pressurize any witnesses and they shall not tamper the prosecution evidence.
- iv) The Appellants shall cooperate for conclusion of trial and shall punctually attend dates of the trial.
- v) It is made clear that the observations made herein-above are only *prima facie* and confined to the decision of this appeal and the trial Judge shall not get influenced by them.

[Y.G. KHOBRADE, J.]