



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

CRIMINAL APPEAL NO. 1024 OF 2024

Azhar Ali Akhtar Ali Sayyed .. Appellant

Versus

The State of Maharashtra and others .. Respondents

Shri Joydeep Nilkamal Chatterji, Advocate for the Appellant.
Mrs. Chaitali Choudhari-Kutti, A.P.P. for the Respondent Nos. 1
and 2.
Ms. Samiksha S. Auti, Advocate for the Respondent No. 3 –
appointed.

CORAM : SHAILESH P. BRAHME, J.
DATE : 05TH MAY, 2025.

FINAL ORDER :

. Learned A. P. P. tenders on record copy of affidavit in
reply.

2. This criminal appeal is directed against judgment and
order dated 10.10.2024 passed in Criminal Bail Application No.
1842 of 2024 by the Special Judge (SC & ST Act)/Additional
Sessions Judge, Aurangabad.

3. Appellant is seeking bail in Cr. No. 170/2024 registered
with Kannad City Police Station for the offences punishable
U/Sec. 302 of the Indian Penal Code and Sec. 3(2)(v) of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act.

4. The respondent No. 3/Walmik Subhash Kamble, who is the son of deceased Subhash Kamble has lodged report with the police that when his father had been to the Zilla Parishad School to take rest on 16.06.2024 at about 01.30 pm, it was reported that appellant was beating his father. Informant along with other witnesses rushed to the spot and found that his father was being beaten up by stick by the appellant on the ground that appellant was suspecting theft of his mobile by the deceased. Deceased was taken to the Civil Hospital immediately. He is declared to be dead at about 4.30 pm.

5. Undisputed facts are that appellant was arrested on 16.06.2024. The charge sheet was filed on 14.08.2024.

6. Learned counsel for the appellant Mr. Joydeep Chatterji submits that considering the account of eye witnesses, it cannot be inferred that there was *mens rea* to eliminate the deceased. Appellant and the deceased were known to each others and they were habituated to consuming liquor together. It is submitted that it was a trifle incident without there being any premeditation. The recovery of the stick is at the instance of the informant, which was being used by the deceased as he was disabled. It is submitted that careful perusal of statement of Mahendra would disclose that there was no another serious reason to cause murder of the deceased. It is submitted that

death is not instantaneous, on the spot.

7. Learned A. P. P. Mrs. Choudhari-Kutti tenders on record the papers of investigation. She would submit that there are five eye witnesses, who are consistent and giving candid amount of overt act of the appellant. She has referred to statement of Pawan Pachunde, Vinit Pakhale and Mahendra, who are independent witnesses. She would further submit that postmortem report shows as many as fourteen injuries in Column No. 17. The cause of death is due to “hemorrhagic shock, resulting splenic rupture and internal subcapsular splenic bleeding”. She would advert my attention to CCTV footage and panchanama to show that incident occurred on 16.06.2024 at about 12.44 pm near Z. P. school. It is contended that deceased was brutally assaulted. Incident was seen by five witnesses and therefore, this is not a fit case to enlarge appellant on bail.

8. Ms. Auti learned counsel appearing for the respondent No. 3 adopts submissions of the learned A. P. P.

9. I have considered rival submissions of the parties. I have also gone through papers of the investigation. It needs to be admitted that appellant was present at the spot along with deceased. The deceased was disabled and was using stick. He was beaten by the appellant by the said stick. Appellant and the deceased were knowing each others. Appellant was suspecting theft of his cell phone at the instance of the deceased, which was

being denied.

10. The statements of the eye witnesses namely Pawan, Mahendra and Vineet disclose that the deceased was being beaten by the appellant near the Z. P. school or near shop of one Bapu. Their statements are almost consistent with the prosecution story or first information report.

11. A careful perusal of the statement of Mahendra @ Ballya shows that deceased, appellant and the said witnesses were knowing each others and were in habit of consuming liquor together. The deceased was disabled and was using a stick. This witness was present since beginning of the incident as he and the deceased had a liquor before the incident. The quarrel erupted due to allegations of the appellant against the deceased for having stolen mobile and their denial. The material collected during the course of investigation did not suggest that there was any serious rivalry and appellant wanted to eliminate the deceased. It was not premeditated offence. There is reason to infer that due to trifle reason appellant bet the deceased with his own stick.

12. It is relevant to refer to statement of Bhimabai Kamble. She was neighbour and relative of the deceased. After occurrence of the incidence, near the Z. P. school, when deceased was taken to his home, she had visited him. She saw the injuries on the person of the deceased. After initial medication, deceased

was brought to home and thereafter again when his condition was deteriorated, was taken to Civil Hospital at about 4.00 pm. The death of the deceased is not instantaneous and on the spot, where the assault took place.

13. I have also gone through the postmortem report showing as much as fourteen injuries in column No. 17. All the injuries are in the nature of contusions. Considering overall circumstances of the case, I am of the considered view that *prima facie*, it does not appear to be a case of murder U/Sec. 302 of the Indian Penal Code. Appellant has undergone sufficient incarceration. He is entitled to be released on bail on certain conditions.

14. It has transpired from record that parties are residents of same place. The trial is being conducted in the Sessions Court at Chhatrapati Sambhajnagar. The witnesses have mentioned that appellant's father is a lawyer. In that view of the matter, it would be in the fitness of the things that appellant shall stay away from entire Chhatrapati Sambhajnagar district for a period of two (02) years.

15. I find that the impugned order is unsustainable. The aspect which I have considered in earlier part has not been dealt with by the learned Sessions Judge. I, therefore, pass following order.

O R D E R

A. The criminal appeal is allowed.

B. The impugned judgment and order dated 10.10.2024 passed in Criminal Bail Application No. 1842 of 2024 by the Special Judge (SC & ST Act)/Additional Sessions Judge, Aurangabad is quashed and set aside.

C. The appellant - Azhar Ali Akhtar Ali Sayyed shall be enlarged on bail in furtherance of offence bearing Cr. No. 170/2024 registered with Kannad City Police Station, Dist. Chhatrapati Sambhajinagar on furnishing his personal bond of Rs. 25,000/- (Rs. Twenty Five thousands only) with one solvent surety in like amount on following conditions :

- (i) The appellant shall not reside and enter in entire Chhatrapati Sambhajinagar district, save and except for attending the trial for a period of two (02) years from today.
- (ii) The appellant shall report his whereabouts to the investigating officer.
- (iii) The appellant shall not contact or tamper the prosecution witnesses.

D. Ms. Auti, learned counsel appointed for the respondent No. 3, her fees is quantified at Rs. 3,000/- (Rs. Three thousands only).

E. The criminal appeal is disposed of.

[SHAILESH P. BRAHME J.]

bsb/May 25