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

CRIMINAL APPEAL NO.82 OF 2025

Damodar Narayan Gelkiwar,
Age 48 Years, Occupation : Agriculture,
R/o. Post Borda Dixit,
Taluka Pomburna,
District Chandrapur.

..... APPELLANT

// VERSUS //

1. State of Maharashtra, through
Police Station Officer,
Pomburna Police Station,
District Chandrapur.

2. Moreshwar Kisan Kumbhare,
Aged 51 Years,
Occupation : Agriculture,
R/o. At Post Borda,
Taluka Pomburna,
District Chandrapur.

.... RESPONDENTS

Mr. S. P. Bhandarkar, Counsel for the applicant.
Ms. Swati Kolhe, APP for the respondent No.1/State.
Mr. Kushal Jain, appointed Counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21.03.2025

ORAL JUDGMENT :

1. **Admit.**

2. Heard finally with the consent of learned Counsel
appearing for the parties.

3. By preferring this appeal, the appellant has challenged
the order passed by the learned Special Judge and Additional

(2)

Sessions Judge, Chandrapur, rejecting the application of the present appellant for grant of bail in connection with Crime No.40/2023 registered with Police Station, Pomburna, District Chandrapur for the offence punishable under Sections 143, 147, 148, 302, 504, 506 read with Section 149 of the Indian Penal Code and under Sections 3(2)(va), 3(2)(v), 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and under Section 135 of the Maharashtra Police Act.

4. The appellant is arraigned as an accused as crime is registered against him on basis of report lodged by Moreshwar Kisan Kimbhare, who alleged that the present appellant and his family members are his neighbours and there is a previous dispute between them and since last two years they are not communicating with each other. On 04.04.2023, the buffaloes of the present appellant had been to his agricultural field and on that count, there was a quarrel between them and during that quarrel, present appellant and other co-accused assaulted the deceased and the deceased died on the next day. As far as the present appellant is concerned, it is alleged that he has given a blow by stick on his head and the death of the deceased is caused due to the head injury.

5. Heard learned Counsel for the appellant, who submitted that admittedly the alleged incident has occurred during the hot

(3)

exchange of words. He submitted that in fact, the FIR is lodged on the baseless and false allegations, but even accepting the allegation as it is, the alleged incident has occurred in a sudden fight and sudden quarrel. Only one single blow allegedly given by the present appellant which resulted into the death of the deceased. Thus, at the most, the case is covered under the culpable homicide not amounting to murder. He submitted that there was no preparation and no intention to cause the death of the deceased. Now the investigation is already completed and charge-sheet is filed, further incarceration of the appellant is not required in view of that, he be released on bail by quashing and setting aside the order passed by the learned Special Judge.

6. Learned APP and learned Counsel for the complainant strongly opposed for the same and submitted that with an intention to cause the death, the deceased was assaulted by the present appellant as well as the other co-accused and the present appellant has given a blow on his head which resulted into his death. Considering the head is chosen by the present appellant to give a blow which sufficiently shows the intention of the present appellant and therefore, considering the *prima facie* case, the application is rightly rejected by the learned Special Judge and no case is made out for grant of bail. In view of that, they prayed for rejection and dismissal of the appeal.

(4)

7. After hearing both sides and on perusal of the investigation papers, it reveals that the FIR is lodged by Moreshwar Kisan Kumbhare, who is the son of the deceased. As per his allegation, there was a previous dispute between the present appellant and his family members and on the day of incident also there was a quarrel between them on account of entering of the buffaloes in the agricultural field of the informant. As far as the allegation is concerned, it reveals that the present appellant has given a blow by stick on the head of the deceased. Learned Counsel for the appellant invited my attention towards the postmortem report which also shows that only one injury i.e. in the nature of abrasion over left temporal region, just above left ear was caused and there was an internal injury in the nature of haematoma present between the skull and dura mater. He submitted that no fracture is noted by the Medical Officer while conducting the postmortem report. Thus, the force can be ascertained from the said aspect that there was no fracture caused even though the injury is caused on the head of the deceased. He further invited my attention towards the statement under Section 164 of the Code of Criminal Procedure of the wife of the daughter-in-law of the deceased and grandson of the deceased and submitted that these statements are inconsistent statements. Now the investigation is already completed, charge-sheet is filed. He submitted that considering the circumstances under which the alleged incident has

(5)

taken place. The knowledge can be attributed to the present appellant, but not intentional. There was no preparation also. In view of that, the appeal deserves to be allowed.

8. Considering the said submissions and considering the investigation papers, admittedly one single injury is sustained by the deceased. The deceased died on the next day. The facts and the statements of the witnesses also disclosed that only one blow was given by the present appellant and the deceased has sustained the injuries on the upper portion of the ear of the deceased and admittedly there was no fracture injury noted by the Medical Officer while conducting the postmortem report. Thus, the facts of the case shows that in a sudden fight and sudden quarrel, the act of giving blow by the stick on head by the present appellant. Whether it is culpable homicide amounting to murder or culpable homicide not amounting to murder, is a matter of evidence. At this stage, considering the only single blow was attributed to the present appellant. There was no premeditation and alleged incident has taken place during the sudden fight and sudden quarrel. The appellant has made out a case for grant of bail. In view of that, the appeal deserves to be allowed. In view of that that, I proceed to pass following order:

ORDER

(i) The appeal is allowed.

(6)

(ii) The order passed by the Special Judge, Chandrapur, rejecting the application in Special (Atrocity) Case No.81/2023 below Exh.117 is hereby quashed and set aside.

(iii) The appellant **Damodar Narayan Gelkiwar** shall be released on bail, in connection with Crime No.40/2023 registered with Police Station, Pomburna, District Chandrapur for the offence punishable under Sections 143, 147, 148, 302, 504, 506 read with Section 149 of the Indian Penal Code and under Sections 3(2)(va), 3(2)(v), 3(1)(r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, and under Section 135 of the Maharashtra Police Act, on executing PR Bond of Rs.25,000/- with one solvent surety of the like amount.

(iv) The appellant shall stay out of Pomburna till the culmination of the trial.

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

(vi) The appellant shall attending the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

(vii) The appellant shall furnish his detailed address where he is intending to reside after he is released on bail along with the address proof.

9. The fees of the appointed Counsel be quantified as per rules.

10. The appeal is disposed of.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.