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

CRIMINAL APPEAL NO.248 OF 2025

1. Atul s/o Gangaram Kokare,
Aged about 30 Years,
Occupation – Labour,
R/o Ganeshpur, Talukh Khamgaon,
District Buldhana.

.... APPELLANT

// VERSUS //

1. The State of Maharashtra
through Police Station Officer,
Police Station Hiwarkhed,
Taluka Khangaon, District Buldhana.
2. Vitthal Dhondur Chavhan,
Aged about 45 Years,
Occupation – Agriculturist,
R/o Hiwarkhede, Khamgaon,
District Buldhana.

.... RESPONDENTS

Mr. S. V. Sirpurkar, Counsel for the appellant.
Ms. Shena Dhote, APP for the respondent No.1/State.
Ms. Priyanka Arbat, appointed Counsel for the respondent
No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22.07.2025

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. By preferring this appeal, the appellant has challenged the order passed by the learned Additional Sessions Judge, Khamgaon and Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, rejecting the bail

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application of the present appellant in connection with Crime No. 216/2024 registered with Police Station Hiwarkhed, District Buldhana, for the offence punishable under Sections 302, 201 and 120(B) read with Section 34 of the Indian Penal Code and under Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The crime is registered on the basis of report lodged by Vitthal Dhondhu Chavhan, who is the Police Officer on an allegation that the missing report was filed by the wife of deceased Savita Nandu Dhandre on 18.10.2022. During inquiry of the said missing report, it revealed to him that there was an illicit relationship between the wife of brother of the Nandu Dhandre and the present appellant and another co-accused also had an illicit relationship with the said lady. This fact was known to the deceased Nandu Dhandre and on that count, he is eliminated by the present appellant and the other co-accused. Therefore, they were taken into custody. On the basis of the report, police have registered the crime against the present appellant.

5. Heard learned Counsel for the appellant, who submitted that after registration of the crime, the appellant approached to the Special Court for grant of bail, but the Special Court has rejected the application observing that considering the gravity of offence, the application deserves to be rejected. Being aggrieved with the

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same, the present appeal is preferred. He submitted that the entire case is based on circumstantial evidence. Only one circumstance on which the prosecution is relied upon is the recovery or the discovery of the weapon at the instance of the present appellant. He submitted that the another circumstance on which the prosecution relied upon is the confessional statement of the co-accused, which is not admissible against the present appellant. He submitted on the basis of the confessional statement of co-accused, the dead body of the deceased was found which was recovered from the agricultural field of the present appellant, and therefore, he is arraigned as an accused. He invited my attention towards the investigation papers and submitted that except the confessional statement of the co-accused and the recovery of the weapons at the instance of the present appellant i.e. after two years of the incident, there is no other material to connect the present appellant with the alleged offence. In view of that, no *prima facie* case is made out and therefore, the appeal deserves to be allowed by releasing the appellant on bail. In support his contention, he placed reliance on **Aghnoo Nagesia vs State Of Bihar** reported in **1965 SCC OnLine 109**, **Jayendra Saraswathi Swamigal vs State Of Tamil Nadu** reported in **(2005) 2 SCC 13**, **Dipakbhai Jagdishchandra Patel vs State Of Gujarat and another** reported in **(2019) 16 SCC 547**.

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6. Per contra, learned APP strongly opposed the said the appeal, on the ground that besides the confessional statement of the co-accused, the recovery of the weapon at the instance of the present appellant and the statements of the various witnesses sufficiently show the involvement of the present appellant in the alleged offence. Considering the *prima facie* case and the gravity of the offence, the appeal deserves to be dismissed.

7. Learned Counsel for the respondent No.2 - victim supported the said contention and invited my attention towards the statement of the woman namely Rukhmini and the statement of Rajesh Vishwanath Ingle which shows that on 18.10.2022 the deceased was along with him till 5.00 p.m. and thereafter, he left the school by informing him that he is proceeding towards his agricultural field and thereafter, not returned back. Thus, she submitted that considering the allegation levelled against the present appellant and his involvement reveals in the said offence therefore, the appeal deserves to be dismissed.

8. On hearing both sides and on perusal of the investigation papers, there is no dispute as to the fact that there is no direct evidence available against the present appellant. The entire case is rested on the circumstantial evidence. One of the circumstance on which the prosecution relied upon is the confessional statement of the co-accused, on the basis of which the

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dead body of the deceased i.e. the skeleton was recovered from the agricultural field of present appellant. The another circumstances the prosecution relied upon is the statement of the present appellant on the basis of which the incriminating articles i.e. spade and wooden log were recovered at the instance of the present appellant, besides that, the statement of the witnesses i.e. Rajesh Ingle and the statement of the Rukhmini. On perusal of the statement of the Rajesh Ingle which only to the extent that on the day i.e. on 18.10.2022 when the deceased got missing, he was along with the Rajesh Ingle for the whole day and in the evening, he informed that he was proceeding towards his agricultural field and thereafter not found. The statement of Rukhmina is to the extent of that there was relationship between her and present appellant and this fact was known to the deceased. Except above this statement, there is only suspicion raised against the present appellant by the other witnesses.

9. The considerations which normally weigh with the Court in granting bail in non-bailable offences basically the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar

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factors which may be relevant in the facts and circumstances of the case.

10. In the light of the above settle principle of law, if the facts and the material collected during the investigation is seen admittedly, the case is based on the circumstantial evidence and when the case is based on the circumstantial evidence, it is well settled law that all the circumstances on the basis of which only the inference of the guilt can be drawn are required to be established by the prosecution. As far as the present case is concerned, except the circumstance that there was discovery of the weapons and the concealment of the weapons at the instance of the present appellant, nothing was collected during the investigation. The another circumstance is the confessional statement of the co-accused which is not admissible against the present appellant. Thus, considering the nature of the evidence, the appellant has made out a case for grant of bail. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The order passed by the learned Additional Sessions Judge and Special Judge, Khamgaon in Regular Criminal Bail Application No.451/2024 dated 02.12.2024, is hereby quashed and set aside.
- (iii) The appellant **Atul s/o Gangaram Kokare** shall be released on bail in connection with Crime No.216/2024 registered with Police Station Hiwarkhed, District Buldhana,

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for the offence punishable under Sections 302, 201 and 120(B) read with Section 34 of the Indian Penal Code and under Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, on executing PR bond of Rs.25,000/- with one solvent surety in the like amount.

(iv) The appellant shall not enter into the village Ganeshpur, till culmination of the trial.

(v) The appellant shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.

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

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

12. The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.