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

CRIMINAL APPEAL NO.661 OF 2024

Jakir Ahmad @ Jako Nisar Ahmad,
Age : 24 Years, Occupation: Labour,
R/o. Muglaipura, Paratwada,
Taluka Achalpur, District Amravati.

..... APPELLANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Chikhaldara,
2. Gondu Ramsu Maraskolhe,
R/o., Kotmi, Gangarkheda,
Taluka Chikhaldara,
District Amravati.

.... RESPONDENTS

Mr. Mohd Amin Mohd Salim, Counsel for the appellant.
Mr. Anant Ghogare, APP for the respondent No.1 /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08.05.2025

1. Heard.
2. **Admit.**
3. By this appeal, the appellant has challenged the order dated 16.07.2024 passed by the learned Special Judge, Achalpur in Criminal Bail Application No.243/2024 by which the application of the present appellant for grant of bail is rejected.
4. This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, raising a challenge to the order of rejection of regular bail in

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crime No.192/2022, registered with Police Station Chikhaldara District Amravati, for the offence punishable under Sections 302, 201, 376-D, 120-B read with Section 34 of the Indian Penal Code and under Sections 3(2)(v), 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act of 1989').

5. The crime is registered on the basis of report lodged by the Police Officer. As per the allegation, deceased girl aged about 19 years was missing from her house on 17.08.2022. After two days i.e. on 19.08.2022, her dead body was found floating in the Well water. The police have initially registered a murg report and conducted inquiry. During inquiry, the police have verified the call details of the mobile phone of the deceased. During inquiry, it was transpired that on 17.08.2022, deceased was in contact with the present appellant and the other boys. The SIM Card of the deceased was later on used by the present appellant Jakir whilst co-accused Amol and Mukesh have switched off their mobiles for few days. The police also came across that on 17.08.2022, the appellant and other two were found roaming near the field where the dead body was found. The body was in decomposed condition, hence, initially cause of death was not revealed. It was found in post-mortem examination that hyoid bone was depressed. Medical opinion was sought on which the possibility of throttling the

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deceased was surfaced. Therefore, the police have registered the crime against three persons including the appellant for committing the murder of deceased. The investigation was completed and charge-sheet has been filed. The appellant has applied to the trial Court for grant of bail, but the same was rejected.

6. Heard learned Counsel for the appellant who submitted that the entire case is based on the circumstantial evidence. Even accepting the allegation as it is, the deceased went missing on 17.08.2022 and her dead body was found on 19.08.2022. Initially, no grievance by the family members of the deceased till lodging of the FIR. The various statements of the witnesses also disclose that the present appellant was in her contact, however, it is not substantiated by the material evidence. He submitted that considering the entire case is based on circumstantial evidence and the chain of the circumstance is not completed to establish the link of the present appellant with the alleged offence. He further submitted that in addition to the merit of the matter, the appellant is behind bar since 12.09.2022, till today charges are not framed. Thus, there is delay in trial. The right of the present appellant as to the speedy trial enshrined under Article 21 of the Constitution is affected. In view of that, he be released on bail. He further submitted that the other two co-accused to whom the similar role is attributed are already released on bail.

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7. Heard learned APP for the State. He submitted that the statements of the witnesses disclose that the present appellant was continuously in contact with the deceased. The statement of the witnesses also shows that when the deceased had been to Pune at her relative's house, at that time also the present appellant had contacted her by telephonic call. The father of the deceased in his statement dated 25.08.2022 has expressed suspicion against the present appellant, however, the crime was registered on 12.09.2022. It also revealed from the police papers that the present appellant had hatched the conspiracy, abducted the deceased and with the aid of the other co-accused eliminated the deceased. The circumstances which are against the appellant are about his presence in the village, his communication with the deceased and his talks with the other co-accused. Thus, as far as the merit of the matter is concerned, there is material available on record to connect the present appellant with the alleged offence. However, considering the ground raised by the appellant that since 12.09.2022, he is behind bar and till today charges are not framed. The report of the Special Court, as filed, is before the Court. It also shows that till today the charges are not framed.

8. In view of the observation of the Hon'ble Apex Court in the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh** reported (2024) 8 SCC 293

wherein by referring its earlier decision in the case of **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another (2024) 9 SCC 813** wherein the Hon'ble Apex Court observed that "if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime." It is further observed that we may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

9. In view of the above observations, though the involvement of the present appellant reveals in the said crime, but as the right of the present appellant as to the speedy trial enshrined under Article 21 of the Constitution is affected. In view of that, the

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appeal deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order of rejection of bail dated 16.07.2024 is hereby quashed and set aside.
- (iii) The appellant **Jakir Ahmad @ Jako Nisar Ahmad** shall be released on bail in crime No.192/2022 registered with Police Station Chikhaldara District Amravati, for the offence punishable under Sections 302, 201, 376-D, 120-B read with Section 34 of the Indian Penal Code and under Sections 3(2)(v), 3(1)(w)(i)(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.
- (iv) The appellant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- (v) The appellant shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.
- (vi) The appellant shall attend the concerned Police Station on twice in a month on 1st and 15th day of every month and the Police Station Officer shall record his presence.
- (vii) The appellant shall furnish his residential address and cell phone number to the Investigating Officer including the names of his two relatives and their cell phone numbers.

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The appeal is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate.