

IN THE COURT OF DISTRICT JUDGE-1, & ASJ, GONDIA.

SPECIAL (ATRO) CASE NO. 21/2022.

(CNR NO.MHGO01000409-2022)

State, PSO, Salekasa -Vs- Gajanan Bhagat + 4

ORDER BELOW EXH. 02.

(Passed on this 05th day of August, 2022)

This is an application filed by applicants/accused No.1-Gajanan & No.5-Rakesh for grant of bail u/s 439 of Cr.PC. The applicant No.1 Gajanan has been arrested on 08/01/2022 and applicant No.2 Rakesh has been arrested on 04/02/2022 by Police Station, Salekasa in Crime No. 05/2022 for alleged offence punishable under Sec. 302 r/w 34 of IPC and Sec.3(2)(v), 3(2)(5-a) of SC & ST (Prevention of Atrocities) Act.

2] Brief facts of the prosecution case is as under:

That, the deceased Sandip Manohar Dhamgaye, aged 28 years was having love affair with Harshlata daughter of accused Girwarlal Uprade since last 2-3 years. Prior to one year there was a settlement. On 07/01/2022 at about 5.30 p.m. he was returning from village Nimba on his motorcycle. The deceased being of Schedule Caste was not acceptable to the accused, hence on that day all the accused way-layed the deceased Sandip and assaulted him with sticks and kicks and threw him in the field. He was thereafter taken to Rural

Hospital. Initially he was found to have simple injuries but as complications developed he was referred to K.T.S., Hospital where he died. As per the post-mortem report the deceased had sustained laceration on the right kidney and died due to haemorrhage and shock as a result of injury to right kidney. The dying declaration of the deceased was recorded while he was hospitalized at the Rural Hospital, Salekasa. In the said dying declaration the deceased named accused Khushal Girawlal Uptrade and Girawlal and two other persons who were not named.

3] Learned Advocate for the applicants submits that the applicants have not been named by the deceased in the dying declaration. The entry of recording of dying declaration was not taken in the general diary which creates doubt of his genuineness as no F.I.R. was registered despite recording of dying declaration. Nothing has been recovered from the applicants. Apart from the statement of co-accused while recording discovery there is no other evidence. He has prayed for grant of bail.

4] I.O. has filed reply at Exh. 05 and opposed the application on the ground that the offence is grievous. Prima facie case is made out. The applicants are relative and mill operator of Girawlal Uptrade who is the main accused. There is

ample evidence in the charge-sheet to show their active involvement in the said crime. The applicants may threaten or influence the witnesses if released on bail. He has prayed for rejection of the application.

5] Notice was also issued to the victim who appeared through advocate Shri Wanjari and objected on the ground that the offence is grievous. The deceased was assaulted and murdered since he belongs to Schedule Caste and love relation between the deceased and daughter of Girawlal was not accepted. Applicants may threaten or influence the witnesses. He has prayed for rejection of application.

6] Ld. APP Shri. Pardhi has opposed the application on the ground that the offence of murder is a serious offence. Prima facie case is made out and there is ample evidence regarding involvement of the applicants. There are chances of influencing and threatening the witnesses who are of the same village. He has prayed for rejection of the application.

7] Perused the charge-sheet. On the vary day of assault i.e. on 07/01/2022 ASI Yashwant Sahare recorded the statement of deceased at Rural Hospital, Salekasa which subsequently acquired the status of dying declaration on the death of Sandip Dhamgaye. Before leaving for the inquiry

Yashwant Sahare had taken entry in the general diary. Copy of which is filed at page No.22 of the charge-sheet. After returning from the hospital also entry in the general diary was also taken which is at page No.25 of the charge-sheet.

8] As per the dying declaration of the deceased on 07/01/2022 while he was returning to his village on motorcycle near the lake on the road, he found Khushal Girawlal Uprade and one man and they assaulted him with stick and he fell down by the side of road. Khushal and the said man thereafter also assaulted him with stick. Thereafter, accused Girawlal and his associate who works in the mill came near to him and they also assaulted with sticks on his legs and back and all the four of them threw him by the side of road near a bridge. Thereafter few people came there and made a call to his maternal uncle who called the ambulance.

9] I have also gone through the statement of Jayendra Ambade who is eye witness. The said witness state that he has seen the applicants and other co-accused assaulting the deceased Sandip Dhamgaye with sticks, kicks and fist. Similarly, statement of Narendra Patle also reveals that he has seen the co-accused as well as the applicants assaulting the deceased by sticks. Statement of witness Sailesh Dudhram Bhasre reveals that on 07/01/2022 Sandip

Dhamgaye was brought by 5-6 persons in an ambulance who told him that the patient fell from motorcycle. When he examined him he found that the injuries were of assault and he inquired from Sandip as to what happened and the said Sandip disclosed that 4-5 persons assaulted him by sticks. He referred the patient to Government Hospital.

10] Perusal of the post-mortem report there are multiple 09 injuries including the back. The cause of death is laceration to right kidney. Since the injury is internal, the doctor at Rural Hospital initially found that the injuries were simple and could not detect the internal injury.

11] The entry was taken by ASI Shri Sahare in the general diary before proceeding to record the dying declaration which finds place in the charge-sheet. Entry in general diary after returning from the hospital is also made. Merely because F.I.R. was not immediately recorded, the dying declaration cannot be doubted or discarded at this stage, more so, when there are statement of other eye witnesses corroborating the dying declaration.

12] Prima facie case is made out against the applicants. Two eye witnesses have identified the applicants as an assailant. Three sticks were recovered from the co-

accused and one stick was recovered at the instance of applicant No.2 Rakesh under Sec.27 of Indian Evidence Act. In the dying declaration also deceased had stated that four persons assaulted him which is corroborated with the testimony of two other witnesses who have identified the applicants as of the assailant. No case for grant of bail is made out as offence is grievous. Hence, I pass the following order.

ORDER

- 1] Application [Exh.02] is hereby rejected.
- 2] Application is disposed of.

Gondia.
Dated: 05.08.2022.

Sd/-*
(Adil M. Khan)
District Judge-1 & ASJ,
Gondia.