

**ORDER BELOW EXH.14**

1. The Advocate of accused No.01 Maroti Harbaji Arade has filed second bail application under section 439 of the Code of Criminal Procedure, 1973 in C.R.No.40/2021 registered at Kalamb Police Station, Dist.Yavatmal for offence punishable under section 302 r/w section 34 of the Indian Penal Code, 1860 and section 3(2)(v) of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989. Say of Learned APP and I.O. was called for. Learned APP and I.O. filed say at Exh.15 and Exh.16 respectively resisting the application.

2. Heard Advocate Shri Imran Deshmukh for accused and Learned APP Shri V.S.Telang for State. It is the contention of Advocate of accused that in Criminal Appeal No.593/2022 on 26/09/2022 the Hon'ble High Court, Nagpur Bench has released accused No.02 Nitesh Gulabrao Karluke on bail. He has prayed to release the accused No.01 on the ground of parity.

3. It is the contention of Learned A.P.P. that the role of accused No.2 Nitesh Gulabrao Karluke who is released on bail by Hon'ble High Court in Criminal Appeal No.593/2022 on 26/09/2022 is different. The ground of parity is not applicable. He has prayed for rejection of the application.

4. Perused record. Sessions Court has rejected the bail application of present accused at Exh.03 on 15/06/2021. The Hon'ble High Court has observed in Criminal Appeal No.593/2022 in para No.09 to 11 as under-

Para 9- What we have noticed from the chargesheet is that except for the story of revealing information of crime during

interrogation, there is no cogent material on record to support the theory of prosecution, at least to the extent of the role played by the Applicant. The Respondent/State claims that a sickle has been discovered at the instance of Applicant.

Para 10- The learned Additional Sessions Judge has rendered a finding that the injury certificate and MLPM report do not disclose that weapon sickle was used in assault to the deceased Namdeo. Despite recording the aforesaid finding, the learned Additional Sessions Judge has rejected the application of the present Applicant, which we find to be erroneous.

Para 11- Insofar as the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is concerned, the Hon'ble Supreme Court in the case of *Khuman Singh V/s State of Madhya Pradesh, (2020) 18 Supreme Court Cases 763* has held that in a case of applicability of Section 3(2)(v) of the Atrocities Act the fact that the deceased belonging to Scheduled Caste or Scheduled Tribe would not be enough to inflict enhanced punishment. The prosecution has to establish that the offence has been committed only because the deceased is belonging to Scheduled Caste or Scheduled Tribe, which is not even the case of prosecution here.

5. The role attributed to the present accused is assault by stick. During interrogation, a stick was discovered at the instance of present accused under section 27 of the Indian Evidence Act, 1872. The story of the prosecution is assault by stick. The P.M. report shows the probable cause of death as– shock and hemorrhage following brain injury and injury to vital

organs. The role attributed the co-accused released on bail was assault by sickle. During interrogation sickle was discovered at the instance of co-accused under section 27 of the Indian Evidence Act, 1872. Thus, the role attributed to the present accused is lesser than that attributed to the co-accused released on bail by the Hon'ble High Court. Accordingly, the ground of parity would be applicable and the present accused is entitled to be released on bail. To protect the family of the deceased the accused can be directed not to enter the territorial limits of village Warha Tq. Ralegaon Dist. Yavatmal. On the ground of parity it is found fit to release the accused on bail by imposing certain terms and conditions to ensure his presence and non tampering of prosecution evidence and witnesses. Accordingly, for the aforesaid reasoning it is held that the role of accused No.02 released on bail and present accused No.01 is similar. As ground of parity is applicable the present accused can be released on bail. Hence, the order-

### **ORDER**

1. The Criminal Bail application is allowed.
2. The accused Maroti Harbaji Arade be released on bail in connection with C.R.No.40/2021 registered at Kalamb Police Station Dist. Yavatmal for offences punishable under section 302 read with section 34 of the Indian Penal Code, 1860 and section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, on Personal Bond of Rs.50,000/- (Rupees Fifty Thousand only), with one solvent surety in like amount on following conditions -
  - (i) The accused shall not enter in the territorial limits of village Warha, Tq. Ralegaon, Dist. Yavatmal.
  - (ii) The accused shall not tamper with the prosecution evidence and also shall not influence the prosecution witnesses in any manner.

- (iii) The accused shall attend this Court on each and every date, unless specifically exempted by this Court.
3. Bail before the Learned J.M.F.C., Kalamb.
  4. The police papers be returned to the Kalamb Police Station.

Date : 01/11/2022  
Place : Yavatmal

Sd/-  
(Dr. Gauri Kawdikar)  
Additional Sessions Judge,  
Yavatmal