
(2023) 08 MP CK 0053
In the Madhya Pradesh High Court
Case No : Criminal Appeal No. 9914 Of 2023

Kuljeet Singh

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 08-08-2023

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(V), 14(A)(2)
Indian Penal Code, 1860 — Section 34, 304
Haath Se Maila Uthane Ka Adhinyam, 2013 — Section 7, 9

Citation : (2023) 08 MP CK 0053

Hon'ble Judges : Satyendra Kumar Singh, J

Bench : Single Bench

Advocate : Sanjay Singh, R.K. Awasthy, Vijay Singh Jadon

Final Decision : Allowed/Disposed Of

Judgement

Satyendra Kumar Singh, J

1. Case diary is available.

2. This first criminal appeal under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "Act, 1989") has been filed against the order dated 28/7/2023 passed by the Special Judge (Atrocities), District Gwalior in Bail Application No.15420/2023, whereby appellant's application for regular bail has been dismissed.

3. Appellant has been arrested on 21/7/2023 in connection with Crime No.316/2023 registered at Police Station Hazira, District Gwalior for commission of offences punishable under Sections 304, 34 of IPC, Section 3(2)(V) of the Act, 1989 and Section 7/9 of Haath Se Maila Uthane Ka Adhinyam, 2013.

4. Prosecution case, in brief is that on 15/6/2023 at about 12 hours complainant Gullu Balmik made a complaint to the police to the effect that on 15/6/2023 at about 6:30 hours co-accused Mahesh Kumar Dhanuk, who is the Contractor and

has been awarded a contract by the Municipal Corporation, Gwalior to clean the sewerage, and the appellant, who is his Supervisor, knowing the fact that complainant's brother Aman Balmik and his relative Vikram Balmik are the members of SC/ST community, without providing any equipment and safety measures instructed them to enter into the sewer chamber constructed near Reshammil Jachchakhana Tank, which was closed for the last so many days, and to clean the same. As complainant's brother Aman Balmik and his relative Vikram Balmik both were working as Safaikarmi in the Municipal Corporation, Gwalior under co-accused Mahesh Kumar Dhanuk and appellant, therefore, Vikram Balmik entered inside the sewer chamber without any equipment and safety measures where poisonous gases were present. He screamed to save him, then complainant's brother-Aman Balmik asked for safety equipment from the co-accused Mahesh Kumar Dhanuk and the appellant, but as the same were not made available to him, therefore, complainant's brother tried to pull Vikram Balmik out of the sewer chamber by inserting his hands inside the sewer chamber, but the poisonous gas present inside the sewer chamber also took complainant's brother-Aman Balmik in grip, as a result, he also fell down inside the sewer chamber. Thereafter, they were taken out of the sewer chamber and were brought to the hospitals, where they were declared dead.

5. Learned counsel for the appellant referring the work order dated 9/6/2023 issued by the office of Commissioner, Municipal Corporation, Gwalior in favour of co-accused Mahesh Kumar Dhanuk submits that the contract to clean the sewerage was given to co-accused Mahesh Kumar Dhanuk on 9/6/2023. The appellant is not working as Supervisor of the co-accused, but he only used to provide labour to him. The equipment including de-silting machine to clean the sewerage was to be made available by the Contractor, i.e. co-accused Mahesh Kumar Dhanuk. Therefore, it cannot be said that the appellant committed any criminal negligence in doing the work assigned to him. He further submits that complainant's brother Aman Balmik and his relative Vikram Balmik; deceased persons, were working for the last one year as employees of the Municipal Corporation. On the date of incident they were instructed by the officers of the Municipal Corporation, Gwalior to clean the sewer chamber constructed near Reshammil Jachchakhana Tank and not by the appellant or co-accused Mahesh Kumar Dhanuk, as no complaint was made to the appellant in this regard. Relatives of the deceased persons were given the proposal of Government job by the Municipal Corporation, Gwalior and the same was accepted, which also suggests that the deceased persons were the employees of the Municipal Corporation, Gwalior. The appellant cannot be held responsible for the death of the deceased persons. Co-accused Mahesh Kumar Dhanuk has already been enlarged on bail vide order dated 27/7/2023 passed by this Court in Criminal Appeal No.8197/2023. Appellant is in custody since 21/7/2023 and his custodial interrogation is no more required. Trial will take time to conclude, therefore, under the aforesaid circumstances, the appellant is entitled for grant of bail.

6. Learned Public Prosecutor for the State as well as learned counsel for the

complainant have opposed the prayer and submit that the appellant was working as Supervisor of co-accused Mahesh Kumar Dhanuk, who had provided all the equipment including de-silting machine to the appellant to clean the sewerage, but still the appellant did not make the equipment available to the deceased persons. The allegations made against the appellant are serious in nature, therefore, he is not entitled for bail.

7. Heard the learned counsel for the parties and perused the record.

8. Having considered the rival submissions, material pointed out by counsel for the appellant, work order dated 9/6/2023 issued by the office of Commissioner, Municipal Corporation, Gwalior in favour of co-accused Mahesh Kumar Dhanuk, postmortem report of the deceased persons, so also the nature of allegations alleged against the appellant as well as considering the overall facts and circumstances of the case, without commenting anything on the merits of the case, this Court is of the view that appellant deserves to be enlarged on bail. Hence, this appeal is allowed and the order passed by the Special Court is hereby set aside.

8.1 It is directed that the appellant be released on bail on furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty thousand only) with one solvent surety in the like amount to the satisfaction of the Trial Court with a direction that he will cooperate in trial and present himself regularly before the Trial Court on each and every date fixed by the Court concerned during trial and if during trial, he is found absent without any sufficient cause by the Trial Court, then the bail order passed by this Court shall automatically come to an end without reference to the Court.

8.2 With the aforesaid, this appeal stands allowed and disposed of.

Certified copy as per rules.