

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6691 OF 2014

The State of Maharashtra **APPLICANT**

V E R S U S

Rajkumar Sheshrao Golekar **RESPONDENT**

**WITH
CRIMINAL APPLICATION NO. 6692 OF 2014**

The State of Maharashtra **APPLICANT**

V E R S U S

Vinod Abhimannyu Gatkhal **RESPONDENT**

**WITH
CRIMINAL APPLICATION NO. 6693 OF 2014**

The State of Maharashtra **APPLICANT**

V E R S U S

Sandip Tukaram Shikare **RESPONDENT**

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Mrs. V.A.Shinde, A.P.P. for Applicant - State.

Mr. N.V.Gaware, Advocate for Respondents.

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CORAM : V.M.DESHPANDE, J.

DATE : 23rd APRIL, 2015

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PER COURT :

1. These three applications can be decided by this common order.

2. By these three applications, State is questioning the correctness of the order passed by the learned Additional Sessions Judge, Ahmednagar dated 04/09/2014, whereby learned Additional Sessions Judge has granted bail in different applications in favour of non applicants in connection with Crime No. 71/2014 for the offences punishable u/s 302,201,143,147,148,149 of the Indian Penal Code, u/s 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes [Prevention of Atrocities] Act and u/s 7 (1) (d) of Protection of Civil rights Act.

3. F.I.R. is dated 29/04/2014. The same was registered on the basis of the report lodged by Raju Namdeo Aage, father of deceased Nitin.

4. Heard Mrs. V.A.Shinde, learned A.P.P. for Applicant – State and Mr. N.V.Gaware, learned counsel for Respondents in each of the present applications.

5. Mr. N.V.Gaware, learned counsel for

Respondents strenuously urged before this Court that the bail granted in favour of present respondents requires no re-consideration from this Court, in as much as, the role attributed to the present respondents is general in nature. According to him, from the statements of various witnesses, it is clear that the role attributed to them is that they attacked deceased Nitin only by fists and kick blows. He submitted that there is no recovery at their instance. He further submitted that after the release of present respondents on bail, they did not mis-use the liberty granted to them. He submitted that the conditions imposed upon each of them were scrupulously followed. He placed reliance on the authoritative pronouncement of the Hon'ble Apex Court in the case of Bhagirathsinh s/o Mahipat Singh Judeja Vs. State of Gujrat, 1984-AIR (SC) 372 and in the case of State Vs. Sanjay Gandhi, (1978) 2 SCC 411 and submitted that the High Court should be very slow while interfering with the order passed by the learned trial Court.

6. From the charge sheet, it appears that deceased was belonging to scheduled caste. It appears that he was in love with a girl, who belongs to higher caste. The love was not approved by the family members of the said girl. It appears that homicidal death of Nitin was occurred out of the said anger, which were nursed in the mind of the persons belonging to higher caste against the deceased, who was from scheduled caste community.

7. The submission of the learned counsel for the

respondents that the role attributed to the present respondents is only to the extent that they have used fists and kick blows, at the first blush is very attractive. No doubt, present respondents were granted bail after filing of the charge sheet. In that context, it was the endeavour of the learned counsel that the role attributed to the present respondents is a mitigating circumstance in their favour, at least for consideration of cancellation of their bail.

8. As observed in the preceding paragraph, that at the first blush the submission of the learned counsel for the respondents appears to be attractive, but on the close scrutiny of the record, the said submission has to be rejected.

Deceased Nitin was firstly beaten mercilessly by the present respondents and other accused persons, whose bail applications are already rejected by the learned trial Court and also by this Court. The statement of witness Ramesh shows that on the date of incident, at 8.15 a.m. when he was proceeding towards his agricultural field, that time near New English School, Kharda, he saw that there was quarrel going on. Therefore, due to curiosity, he stopped his motorcycle and went near the place of quarrel, just to notice that the deceased, who was known to him, was mercilessly beaten by the present respondents and other accused persons by means of fists and kick blows. At the time of giving assault, present respondents and other accused were using abusive language in the name of caste of the deceased and also challenging him in the name of his caste. That time, deceased was pleading with them that he should not be beaten, however other co-accused

alleged that this boy is entangled with a girl. Statement of Ramesh shows that he tried to intervene in the matter and he tried to convince the present respondents and other accused with a pleading that Nitin should not be beaten.

9. That time, present respondents along with other accused persons took Nitin in the school. That time, S.S.C. Examination was in progress. Though S.S.C. Examination was going on in the school, deceased was beaten by all the accused persons. One of the accused, in fact, took out a hammer from school itself and assaulted the deceased. Statements of Balu, Rajendra and Sadhana show that these witnesses are the Teachers in the school and in their presence, Nitin was beaten. Thereafter, according to prosecution, deceased was taken to a brick kiln of one of the co-accused Sheshrao and there also he was mercilessly beaten. According to the material available in the charge sheet, thereafter he was taken towards temple of Kanhoba. F.I.R. shows that after getting information about merciless beating to their son, first informant Raju and Rekha reached to Sheshrao, who disclosed to them that after giving solid beating to their son, he is being taken towards the temple of Kanhoba. Unfortunate parents thereafter went near Kanhoba temple just to notice the dead body of Nitin in hanging condition to a branch of tree.

10. Charge sheet shows the opinion of Doctor, which clearly shows that in view of the position of ligature mark, the case is not of hanging but it is strangulation. Thus, it is clear that after beating deceased mercilessly, he was strangled

and a show was made by the accused persons as if the deceased had hanged himself. Statement of Raju Jadhav is there in the charge sheet, which shows that he is seen with 10-12 persons, they were beating deceased Nitin and from the cattle shed, rope was taken and thereafter accused persons strangled said person and they made show that as if the person who was mercilessly beaten, has hanged himself.

11. In this context, the arguments of learned counsel for the respondents is highly mis-placed that the role attributed to the present respondents is only of giving fists and kick blows. Presence of the present respondents is confirmed at all the places by the prosecution witnesses. Further, it emerges from the material available in the charge sheet that deceased Nitin was seen lastly alive in the company of present respondents along with other accused. Not only that, after strangulation, which resulted into the death of Nitin, present respondents and others made a show as if deceased had committed suicide. Postmortem report, especially column No. 17, clearly shows various injuries on the body of deceased, which confirms that the deceased was mercilessly beaten.

12. Learned trial Court, in my opinion, has not considered all these aspects in its correct perspective. Learned trial Court has granted bail in favour of present respondents. However, at the same time, it was expected from the Court below to reach to the conclusion after considering the cumulative effect of entire prosecution case. Learned Judge of the Court below has not at all considered the aspect that the

deceased was lastly seen alive in the company of the present respondents coupled with the fact that there are eye witnesses, who confirmed the presence of the present respondents at different places and attributed specific role to each of them, which is supported by medical evidence.

13. In that view of the matter, order of bail granted in favour of present respondents is required to be interfered with and accordingly the application filed on behalf of State u/s 439 (2) of Code of Criminal Procedure needs to be allowed.

14. Hence, I pass the following order :

(i) Present Criminal Applications are allowed.

(ii) The order passed by the learned Additional Sessions Judge, Ahmednagar dated 04/09/2014 below Exh. 7,10 and 11 in Sessions Case No. 225/2014 and in Crim. Misc. Application No. 723/2014 is hereby quashed and set aside.

(iii) Bail granted to respondents Rajkumar Sheshrao Golekar, Vinod Abhimannu Gatkhal and Sandip Tukaram Shikare is hereby cancelled. Bail bonds executed by them are hereby cancelled.

(iv) Investigating Officer is directed to take immediate steps to arrest present respondents in

the said crime.

At this stage, learned counsel for present respondents submitted that the effect and operation of the present order may be stayed for the period of four weeks, since present respondents were granted bail on 04/09/2014.

Looking to the said aspect, the effect and operation of the present order shall be stayed for the period of four weeks from today.

[V.M.DESHPANDE, J.]

KNP/Cr.Apln. 6691...2014