

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.214 of 2018

Ibrahim @ Ibu Jamil Mukadam .. Appellant
Versus
The State of Maharashtra & Anr .. Respondents

...

Mr.Nitin Sejpal with Pooja Sejpal for the appellant.
Mrs.P.P. Shinde, APP for the State.
Mr.A. A. Katarnaware for the respondent no.2.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 1st NOVEMBER, 2018

P.C:-

1 Heard learned counsel for the appellant, learned
APP for the State and learned counsel for the original
complainant.

2 The appellant is original accused no.9. He along
with nine others came to be arrested on 22nd July 2016 in FIR
bearing No.I-266 of 2016 by Nerul Police Station on the
allegation of commission of offences punishable under Sections

143, 147, 149, 302, 364, 323, 504, 5-6 IPC and 3(1)(R),(S), 3(2)(V) and (VA) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 The appellant preferred Bail Application before the Sessions Court by filing an application at Exhibit-64. However, that application came to be rejected on 2nd August 2017 and therefore, the applicant is before us.

4 Mr.Sejpal learned counsel for the petitioner, at the outset invited our attention to the orders passed in Criminal Appeal Nos.807/2017 and 882/2017. The appellant in Criminal Appeal No.807 is Imad Bashir Thakur who is the original accused no.8 in the subject crime and Appellant in Criminal Appeal No. 782/2017 is Malti Rajendra Naik who is the original accused no.7 in the subject crime. The Appeals came to be disposed of by releasing the appellants on bail with a specific observation to the following effect :

“After completion of investigation into the subject FIR, the charge-sheet is already filed in the concerned Sessions Court. Copy of the charge-sheet

is annexed to the petition. We have gone through statements of eye-witnesses including that of Sabira Sayyad and Vishal Rane, which show that Appellant was present on the spot of incident at the time of commission of offence. Nevertheless, the vital blow given to the deceased – Swapnil on the head is not attributed to the present appellant.

According to the prosecution in the identification parade, Complainant and said Vishal Rane have identified the present Appellant as a person accompanying Sagar Naik. However, no specific role is attributed to the present appellant. We have also perused the post mortem report of the deceased – Swapnil. The report disclosed that the cause of his death is head injury, which prima facie in our opinion cannot be attributed to the present appellant. The appellant is woman and she is in custody since 22nd July 2016. The investigation is over and charge-sheet is also filed. Taking totality of the facts and circumstances of the case into consideration, we do not find any impediment to grant bail to the present appellant in the subject crime”.

5 Mr.Mundargi, learned counsel for the appellant seeks bail on the ground of parity with original accused nos.8

and 7 i.e. Imad and Malti respectively. We have considered the submission of the respective counsel and we have also gone through the various submissions including the FIR. We also asked the learned counsel for the complainant to distinguish the role of the present appellant and those of the appellants in Criminal Appeal Nos.807/2018 and 782/2017 who were released on bail by an order dated 21st November 2017. Learned counsel for the complainant was not in a position to point out any distinction.

6 We have also independently gone through the FIR and the relevant submissions and we find that the role of the present appellant is similar to the role attributed to the appellants Imad and Malti. The charge-sheet *prima facie* shows that one Sagar Naik and his father assaulted the deceased. And it is also the case of the prosecution that Sagar assaulted on the head of the deceased Swapnil and this injury appears to be the cause of death as per the post mortem report.

7 In light of above observations in the above circumstances, we pass the following order :

Tilak

ORDER

The appellant is directed to be released on bail on his furnishing P.R. Bond of Rs.20,000/- (Rupees Twenty Thousand) to the satisfaction of the trial Court on the condition that he shall attend Nerul Police Station as and when required.

Parties to act on an authenticated copy of the order.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)