

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.92 OF 2019

SWAPNIL @ BACCHU NAMDEV GHATAGE)...APPELLANT

V/s.

1) STATE OF MAHARASHTRA

)

)

2) ROSHAN SUNIL KAMBLE

)...RESPONDENTS

Mr.Tanaji Mhatugde, Advocate for the Appellant.

Mrs.S.V.Sonawane, APP for the Respondent - State.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 26th MARCH 2019

JUDGMENT :

1 Heard. Admit. Heard finally, as the appeal is arising from order of the learned Special Judge rejecting the application for grant of regular bail to the appellant/accused no.1.

2 By this appeal, the appellant/accused no.1 is challenging the order dated 19th October 2018 passed by the learned Special Judge and Additional Sessions Judge, Kolhapur, below Exhibit 28 in Sessions Case No.121 of 2018, thereby rejecting his application for release on bail in the said sessions case for offences punishable under Sections 307, 341, 323, 324, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code as well as under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and under Section 135 of the Maharashtra Police Act, 1951.

3 Heard the learned counsel appearing for the appellant/accused. He submitted that after filing of the charge-sheet, further pre-trial detention of the appellant/accused is not warranted. As against this, the learned APP opposed the appeal and supported the impugned order rejecting bail by contending that after assaulting the victim, the appellant/accused chased him right inside the police station, and therefore, considering this

conduct, he is not entitled for bail. None appeared for respondent no.2/First Informant, despite service.

4 We have considered the submissions so advanced and perused the charge-sheet. Statement of injured Roshan Kamble recorded on 9th June 2018 shows that on 8th June 2018 there was quarrel between two parties and he pacified both parties by intervening in the said quarrel. At that time, the appellant/accused and his associates gave threats to him. Thereafter, on 9th June 2018, when he was returning to his house, the appellant/accused and his associates intercepted him. First Informant Roshan Kamble further stated that when he was trying to run away, the appellant/accused gave blow of knife on his back, co-accused Ganesh Chavan hit him with a piece of tile and other accused persons assaulted him by means of fists and kick blows. The First Information Report (FIR) further reflects that when Roshan Kamble took shelter at the police station, the appellant/accused and co-accused Ganesh Chavan chased him inside the police station where they came to be apprehended by

the police. It is seen from the record that injured Roshan Kamble took medical treatment at the Government Medical Hospital at Kolhapur. He was found to have suffered stab wounds at left lower back of size 2 x 1 cm. Blade of the knife was found in situ and it had pierced skin and muscle. There was no injury to kidney or other parts of the body of the victim. Apart from this stab injury, the injured was having contusion of size 3 x 2 cm on left temporal region.

5 Investigation of the crime in question is over and sessions case arising therefrom is pending for trial before the learned Special Judge. Considering the nature of injury suffered by the victim, on conclusion of trial, it will have to be determined whether the offence punishable under Section 307 read with 149 of the Indian Penal Code is made out or not. However, pre-trial detention of the appellant/accused is not warranted. The learned trial court has failed to consider nature of wounds suffered by the victim and had rejected the application for grant of bail by recording that the offence is serious and punishment can go up to

10 years or life. Injury certificate was kept out of consideration by the learned trial court. In this view of the matter, the following order :

ORDER

- i) The appeal is allowed.
- ii) The impugned order dated 19th October 2018 passed by the learned Special Judge and Additional Sessions Judge, Kolhapur, below Exhibit 28 in Sessions Case No.121 of 2018, thereby rejecting his application for grant of bail of the appellant/accused is quashed and set aside.
- iii) The appellant/accused is directed to be released on bail in Crime No.94 of 2018 registered with Kagal Police Station for offences punishable under Sections 307, 341, 323, 324, 504, 506, 143, 147, 148 and 149 of the Indian Penal Code as well as under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and under Section 135 of the Maharashtra Police Act, 1951, on

executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

- iv) As a condition of this order, the appellant/accused should not repeat commission of similar offence in future.
- v) The appellant/accused shall not make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any Police officer.
- vi) The appeal stands disposed off accordingly.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)