

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1016 OF 2019

Shriniwas Mahankali Yeladi

...Appellant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr. Viresh Purwant a/w. Mr. Rushikesh Kale and Mr. Jay Patil, for
the Appellant.

Mr. V.B. Konde-Deshmukh, APP for the Respondent-State.

**CORAM : INDRAJIT MAHANTY &
N.B. SURYAWANSHI, JJ.**

DATE : SEPTEMBER 05, 2019

P.C.:

- . Heard the learned counsel for the respective parties.
2. This Appeal is filed challenging the judgment and order dated 6th July, 2019 passed by the learned Additional Sessions Judge-3, Solapur in Criminal Bail Application below Exhibit 1 in C.R. No. 485 of 2019 pending before learned Chief Judicial Magistrate, Solapur.
3. In the present Appeal the original complainant is arrayed as Respondent No. 2. We are aware that the victim has a right to be heard in the Court proceeding. The provision of section 15(A) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act

(in short “the said Act”) mandates the issuance of notice to the complainant/victim. However in the peculiar facts and circumstances of the present case, since there are no allegations against the present Appellant that he has committed any offence under the provisions of the said Act, we do not feel it necessary to issue notice to Respondent No. 2.

4. The prosecution case in short is that the first informant lodged complaint on 12th June, 2019 alleging that his brother Rajesh Kamble who was practicing as an advocate since last 15 years, went missing since 8th June, 2019 from 12 – 12.15 p.m. Since Rajesh did not return home, the informant along with relatives took search of Rajesh but it was unsuccessful. On 9th June, 2019 since Rajesh could not be traced, the informant along with father gave missing report at Vijapur Naka police station bearing number 74 pf 2019. Thereafter, also search continued, however, Rajesh could not be found. On 10th June, 2019 at about 9.00 am, typist of advocate Rajesh informed the first informant that in the last week on Banty @ Sanjay Kharatmal working in Ashwini hospital, Solapur told advocate Rajesh that he has brought big case for Rajesh. The complainant tried to search for

Banty however he was not found. Hence, suspicion was expressed before the investigating officer on 12th June, 2019 about Banty. API. Patil then gave two police constables with the complainant and they all went to the house of Banty situated at Pandurang vasti. There was foul smell coming out of the house. The said fact was informed to Sadar Bazar police station, Solapur and police officials arrived on the spot. In the presence of panch witnesses, the house was opened. At that time, one human body kept in two plastic bags and three weapons were found. Blood was found spread on the spot. The dead body was identified by the complainant as that of Rajesh. It was noticed by the complainant that two lockets and three rings on the person of deceased Rajesh of 5½ tolas, approximately of Rs. 1,50,000/- were missing. So also mobile and motor cycle of the deceased were missing. Accordingly, the complaint was lodged vide C.R. No. 485 of 2019 on 12th June, 2019 with Sadar Bazar police station, Solapur.

5. During the course of investigation, the Appellant/accused was arrested on 17th June, 2019 and was remanded to police custody till 21st June, 2019 which was extended up to 25th June, 2019. The

Appellant thereafter preferred regular Bail Application before the learned Additional Sessions Judge which came to be rejected mainly on the ground that the investigation is still in progress and offence is serious in nature.

6. The learned advocate for the Appellant submits that the Appellant is alleged to have purchased the ornaments from main accused Banti Kharatmal. Therefore, provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act are not applicable in the facts and circumstances of the case to the extent of the Appellant. There is no allegation against the Appellant that he has committed the offence under the provisions of Atrocities Act. The First Information Report does not state so. The entire allegations are against the main accused Banty. He submits that to the extent of present Appellant the only allegation is that he purchased the gold ornaments of the deceased from accused Banty. The Appellant is entitled to be released on bail.

7. The learned APP opposed the bail stating that this is not the case of bail since the offence alleged against the Appellant and the co-

accused are of serious in nature and there is recovery from the Appellant. He therefore prayed for rejection of bail.

8. With the assistance of learned APP, we have perused the investigation papers.

9. During the investigation, the gold ornaments were recovered from the possession of the Appellant at the instance of main accused Banty who gave disclosure statement under section 27 of the Evidence Act. The offence is registered on 12th June, 2019 and the allegation against the present Appellant are to the extent of purchasing of stolen articles. The articles are already recovered from the Appellant and he is in custody since more than two months. There is no dispute that there are any allegations against the present Appellant that the Appellant/accused has committed offence punishable under section 3(ii)(v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and under sections 302, 201, 327, 120(B), 411 read with 34 of Indian Penal Code and section 4(25) of Indian Arms Act. The material collected during the course of investigation reveals that the Appellant is permanent resident of

24, Shastri Nagar, Bhagat Singh Chowk, Solapur and his presence can be secured at the time of trial by imposing suitable conditions. No useful purpose will be served by further detaining of Appellant in the custody. Therefore, the following order.

10. The impugned order dated 6th July, 2019 passed by the learned Additional Sessions Judge-3, Solapur in Cri. Bail Application below Exhibit 1 in C.R. No. 485 of 2019 of Sadar Bazar police station, Solapur is hereby quashed and set aside.

11. The Appellant be released on bail in the above C.R. on furnishing bail bond of Rs. 25,000/- with one surety in the like amount subject to the following conditions:

(i) The Appellant shall attend Sadar Bazar police station, Solapur every Sunday between 12.00 noon to 3.00 pm till filing of the charge-sheet.

(ii) He shall neither tamper with the prosecution evidence nor shall try to influence the prosecution witnesses.

(iii) The Appellant shall surrender his passport, if any, to the Special Court, Solapur.

(N.B. SURYAWANSHI, J.)

(INDRAJIT MAHANTY, J.)