

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

CRIMINAL APPEAL (APEAL) NO.380/2019

Firoz Khan S/o. Akbar Khan & Anr.

..VS..

The State of Maharashtra, thru. P.S.O., P.S. Akot (Rural), Dist. Akola & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Anil Mardikar, Senior Advocate, assisted by Shri Sumit G.
Joshi, Advocate for the applicants

Shri C. A. Lokhande, A.P.P. for the non-applicant No.1

CORAM : Z.A.HAQ AND

PUSHPA V. GANEDIWALA, JJ.

DATED : 3rd October 2019

Learned senior Advocate, on instructions,
seeks permission to withdraw the appeal. Leave granted.

The Criminal Appeal is **disposed**, as
withdrawn.

2] At the time of hearing of the appeal, we have noticed the earlier order passed by this Court on 25th July 2019 calling upon the learned Additional Public Prosecutor to obtain instructions if State intends to challenge the order, granting bail to co-accused i.e. accused No.3-Akbar Khan and accused No. 4-Imaran Khan. On the next date i.e. on 31st July 019, learned A.P.P. sought time to make statement in compliance to the order dated 25th July 2019. Again on 14th August 2019, learned A.P.P sought time to file additional affidavit. On 28th August 2019, again learned A.P.P. was

granted time to make statement if the order passed by the Sessions Court granting bail to accused No.3-Akbar Khan and accused No. 4-Imaran Khan was being challenged. Again on 5th September 2019, learned A.P.P was not in a position to make definite statement and therefore, this Court expressed that if by the next date statement was not made on behalf of the State, this appeal would be heard. Order dated 11th September 2019 records that though notice was issued to S.D.P.O., Akot, it was not served upon him. We are suprising to note that S.D.P.O., Akot was not served with the notice. The fact remains that till date appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989 challenging the order passed by the Sessions Court on Miscellaneous Criminal Application No. 49/2019 granting bail to accused No.3-Akbar Khan and accused No. 4- Imran Khan, is not filed. It is informed that though appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act, 1989 is not filed, the investigating agency has filed an application under Section 439 (2) of the Code of Criminal Procedure before the Sessions Court, praying that bail granted to the accused Nos. 3 and 4 be cancelled, as they have committed breach of conditions imposed by the Sessions Court while granting bail.

3] Today at the time of hearing of Criminal Appeal No. 380/2019, filed by the accused No.1-Firoz

Khan and accused Nos. 2 Salim Khan, learned A.P.P strongly relied on the statement of Gajanan Jayale Patil and Ranjeet Kahar. In the statement of Gajanan Jayale Patil and Ranjeet Kahar it has come on record that accused No.3-Akbar Khan and accused No.4-Imran Khan assaulted the victim (Seven year old boy). It is surprising that though the investigating agency strongly relied on the statements of Gajanan Jayale Patil and Ranjeet Kahar while opposing the prayer made on behalf of the appellants in Criminal Appeal No. 380/2019 for grant of bail, the investigating agency has not taken any steps to challenge the order passed by the Sessions Court, by which bail is granted to the accused No.3-Akbar Khan and accused no. 4-Imran Khan.

4] The earlier orders passed by this Court sufficiently indicate that the State was hinted to proceed further in the matter to challenge the order passed by the Sessions Court granting bail to accused No.3- Akbar Khan and accused no. 4-Imran Khan. The attitude of office of Public Prosecutor at Nagpur, office of Public Prosecutor at Akot, Distt. Akola and the investigating officer is un-acceptable. As noted earlier, a submission was made that notice of the order dated 5th September 2019, directing that the S.D.P.O., Akot should remain present before this Court, was not served.

Considering the facts of the case specially that the victim was seven year old boy and the medical

report support the claim of investigating agency about cause of death, and considering the stand taken by investigating agency at the time of hearing of Criminal Appeal No.380/2019, relying on the statements of Gajanan Jayale Patil and Ranjeet Kahar, we are of the view that the State should file Appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the order passed by the Sessions Court on Miscellaneous Criminal Application No. 49/2019 on 5th April 2019. The appeal shall be filed till **7th October 2019**.

We are cautious that this Court should be extremely slow in passing such order, as is being passed in the present matter. However, the facts on record create doubt in our minds regarding proper investigation of the matter and therefore, we are constrained to pass such order.

Shri. C. A. Lokhande, learned A.P.P. directed to bring this order to the notice of Public Prosecutor, by evening today itself.

(PUSHPA V. GANEDIWALA, J.)

(Z.A. HAQ, J.)