

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 414/2020

Rahul Suresh Patil,
Age 25 years, Occ. Student,
R/o. Anna Sathe Chowk, Patipura,
Dist. Yavatmal

.... **APPELLANT**

// VERSUS //

- 1] State of Maharashtra,
Police Station : Lohara,
Dist. Yavatmal
- 2] Aakash Pundlik Wankhede,
Age 25 years, Occ. Student,
R/o. Netajinagar, Yavatmal,
Dist. Yavatmal

.... **RESPONDENT(S)**

Shri P.W. Mirza, Advocate for the appellant
Shri S.S. Doifode, APP for the respondent no.1

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
DATED : 08/12/2020

ORAL JUDGMENT : (PER:- Z.A. HAQ, J.)

- 1] The respondent no. 2 – Informant / Victim is served with the notice of this appeal and Shri A.K. Sorde, Advocate had put in appearance on his behalf, however, Shri A.K. Sorde, Advocate has filed Criminal Application

(APPA) No. 2256/2020 on 03/12/2020 praying that he be discharged from representing the respondent no. 2 as the respondent no. 2 is not giving instructions. None appeared for the respondent no. 2 inspite of service of notice. Hence, we proceeded with the appeal.

2] Heard Shri P.W. Mirza, Advocate for the appellant and Shri S.S. Doifode, APP for the respondent no. 1 – State.

3] **ADMIT.**

4] The appellant came to be arrested on 12/12/2019 in connection with Crime No. 241/2019 registered with the respondent no. 1 – Police Station for the offences punishable under Sections 302, 307, 143, 147, 148, and 149 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appellant is in jail.

5] The accusations against the appellant and 11 others are that they are involved in the murder of Vinay K. Rathod and in the assault on the respondent no. 2 – Victim. As against the appellant, the accusations are that he is the mastermind of the conspiracy. Undisputedly, the appellant was not on the scene of crime. The respondent no. 1 – Investigating Agency relies on

the statements of two persons and the call detail report to urge that the appellant and the co-accused Pawan and Durgesh were continuously in contact with each other on cell-phone on the date of commission of the offence and on the subsequent day. Reliance placed by the Investigating Agency on the call detail report is challenged by the appellant on the ground that they are not supported by the certificate under Section 65B of the Indian Evidence Act and the transcript of the alleged conversation is not on record.

6] According to the appellant, he had been knowing the co-accused Pawan as he had some business transactions with him and he used to be in contact with the co-accused Pawan on cell-phone earlier also.

7] Be that as it may, considering the facts of the case and as the investigation is complete and charge-sheet is filed and according to the appellant, he is not involved in any other crime/offence and is a student and as the respondent no. 1 – Investigating Agency has not been able to show that custody of the appellant is required, the following order is passed:-

- a) The impugned order is set aside.
- b) The appellant, having been arrested in connection with Crime No. 241/2019 registered with the respondent no. 1

– Police Station, he be released on bail on executing PR. Bond for Rs. Fifty Thousand and on furnishing two solvent sureties in the like amount.

c) The appellant shall attend the Sessions trial on every date unless granted exemption by the Sessions Court.

In case, the appellant fails to attend any date before the Sessions Court without there being any exemption by the Sessions Court, the respondent no. 1 – Investigating Agency or the learned Sessions Judge may refer the matter to this Court for cancellation of bail of the appellant.

The appeal is **allowed** in the above terms.

CRIMINAL APPLICATION (APPA) NOS. 427/2020 and 497/2020

In view of the disposal of the Criminal Appeal, these applications praying for grant of time to file certified copy of order dated 08/10/2019 and for withdrawal of the Vakalatnama do not survive. They are **disposed** accordingly.

JUDGE

JUDGE