

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

956 CRIMINAL APPEAL NO.379 OF 2021

KALPANA W/O. KISHOR SAPKALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

WITH
CRIMINAL APPEAL NO.384 OF 2021

PREMRAJ RAMESH PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Appellants : Mr Karpe R R a/w Aniket
Bhosale

APP for Respondents : Mr. R V Dasalkar
Advocate for Respondent 2 : Mr.M.B. Sandanshiv

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CORAM : V.K. JADHAV & SHRIKANT D. KULKARNI, JJ.

Dated : August 21, 2021

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PER COURT :-

1. The appellants are seeking regular bail in connection with Crime No.331 of 2020 (Special Case No.79 of 2020) registered with Belwandi Police Station, District Ahmednagar for the offences punishable under Sections 302, 143, 147, 148, 149, 201, 120-B read with Section 34 of IPC and Section 4(I)(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

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Act. Their application with similar prayer in Special Case No.79 of 2020, below Exh.7 and 17 came to be rejected by the learned Additional Sessions Judge, Shrigonda, District Ahmednagar by order dated 27.7.2021. In terms of the provisions of Section 14-A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellants/original accused Nos.2 and 4 have preferred these two appeals.

2. Though informant Akashda has given some different story while lodging the FIR, however, during the course of investigation, her supplementary statement was recorded, wherein she has given the true story of the incident. It further appears from the eye witnesses to the incident including the independent witness Yogesh Thakur, who was the driver, the step son of the informant namely Natick allured the accused party by showing them the real gold coins with the assurance that he would supply some real gold to them on cheap rate. In view of the same, after verifying the said gold coin from a goldsmith, the accused party shown their

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ready and willingness to purchase the gold at the cheap rate. Consequently, both the parties have decided to meet at some place. It further appears from the statement of eye witnesses and even from the supplementary statement of informant Akashda that as agreed, the accused party including the present appellants had been to the spot of incident and paid the informant party the amount of gold to be purchased and at that time the said step son of the informant namely Natic had given call to the persons accompanied him and all of them seem to have assaulted the accused party. As per the eye witnesses, the present appellants along with co-accused persons had been to the spot, however, all of them were assaulted and even the golden chain from the neck of the co-accused Ashabai allegedly snatched during the assault. It further appears that co-accused Naresh when he was surrounded by the informant party, took out a knife from his pocket and inflicted injuries with the help of knife on the body of four persons, those are (1) Natic, (2) Shridhar, (3) Nagesh and (4) Limbya. In consequences of the same, aaa/-

all those four persons sustained the severe injuries and subsequently died. The accused party fled away from the spot in a car.

3. The learned counsel for the appellants Mr. Karpe submits that, except the presence of appellants on the spot, there are no allegations against them about actual participation in the crime involving the physical violence. Moreover, it appears from the statement of the eye witnesses including the informant that the accused persons had been to the spot of incident on invitation and even they had parted with the money brought by them for purchasing the gold. The learned counsel submits that there was no first move from the side of the accused persons and only when co-accused Naresh was surrounded and assaulted by the informant party, he has assaulted them and inflicted the injuries on their person with the help of knife. The learned counsel submits that there are no antecedents. Appellants are languished in jail since 25.08.2020. The investigation is over and the charge-sheet has been submitted. The

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appellants are ready to abide the conditions as imposed by this Court so also ready to furnish the surety to the satisfaction of this Court.

4. The learned APP Mr. Dasalkar submits that, it is a serious crime involving four deaths. Even though the investigation is completed and the charge-sheet has been submitted, however, if the appellents are released on bail, there is every possibility of tampering with the prosecution evidence. Furthermore, there is also possibility of abscondancy. The appellants/accused may not be released on bail. Learned APP submits that the appellant Kalpana Sapkale has carried chilly powder with her and that shows about prior concert of mind amongst the accused persons.

5. The learned counsel Mr. Sandanshiv appearing for respondent No.2 submits that, the co-accused Naresh Sonawane had assaulted the informant's party in such a vicious manner that he had caused the death of four persons. The learned counsel submits that the assault with the help of deadly weapon knife and causing death

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of four persons itself indicates that there was prior concert of minds amongst the accused persons and resultantly, co-accused Naresh had assaulted the informant's party.

6. On going through the allegations made in the supplementary statement of the informant recorded during the course of investigation and statement of eye witnesses Avadhut Chavan, Omkar Chavan and independent eye witness Yogesh Thakur, it appears that the accused party had been to the spot for purchasing the gold as assured to them by the step son of the informant namely Natic. It further appears that they went there in a swift car being driven by the said eye witness Yogesh Thakur. All the accused persons got down at the spot since the said step son deceased Natic had been to the spot to receive them. Thereafter as per their demand, the accused party had given them the amount brought by them for purchasing the gold. It appears that thereafter the incident had taken place. It is for the trial court, during trial, to consider as to

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whether co-accused Naresh had assaulted four persons with the help of knife for defending himself or otherwise. So far as the present appellants are concerned, on careful perusal of the statement of the eye witnesses including the informant, we find that except their presence on spot, no overt act has been attributed to them. So far as Section 34 is concerned, two elements are important, firstly, element of intention and secondly, participation in the commission of the crime either this or that way involving the physical violence. It appears from the statement of eye witnesses that after deceased Natic called his persons on the spot and all those persons after coming to the spot started snatching the articles, ornaments from the person of the accused party, the present appellant rushed towards the said car and boarded it. So far as the eye witnesses are concerned, except the witness Avadhut Chavan, the other witnesses have not ascribed any role to the appellant. Further eye witness Avadhut though has not ascribed any role to the appellants in the statement recorded by the police. However, we have considered the

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supplementary statement of the informant Akashda so also the independent witness like Yogesh and Omkar. We do not find any role ascribed to the appellants in the entire incident. Though the learned Sessions Judge has observed that the appellants had a knowledge that co-accused Naresh was carrying the knife, however, on perusal of the entire charge-sheet, we do not find that the appellants had a specific knowledge about the same. In view of the same, considering the role attributed to the appellants and the evidence so far collected against them, we are inclined to grant bail to them. There are no antecedents. So far as the apprehension expressed by the learned APP about tampering of the prosecution evidence and the possibility of absconding is concerned, the stringent condition can be imposed to take care of it. Hence, proceed to pass the following order :-

ORDER

1. Criminal Appeal No.379 of 2021 and Criminal Appeal No.384 of 2021 are hereby allowed.

2. The appellant Kalpana w/o Kishor Sapkale and in Criminal appeal No.379 of 2021 and the appellant Premraj Ramesh Patil in Criminal appeal no.384 of 2021 in connection with Crime No.331 of 2020 (Special Case No.79 of 2020) registered with Belwandi Police Station, District Ahmednagar for the offences punishable under Sections 302, 201, 120-B read with Section 34 of IPC and Section 4(I)(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act be released on bail on furnishing P.B. of Rs.1,00,000/- (Rupees One lakh only) EACH, with two sureties of the like amount by each of THEM, on the following conditions :-
 - a] The appellants shall attend the concerned police station once in a week i.e. on every Sunday between 9.00 to 11.00 a.m. for a period of six months and thereafter on every first Sunday of each month on the same time for a further period of three months.
3. Both the criminal appeals accordingly disposed off.

(SHRIKANT D. KULKARNI, J.) (V. K. JADHAV, J.)

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