

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL APPEAL NO.158 OF 2021

Akshay Dilip Koli ... Appellant

Vs.

State of Maharashtra & another ... Respondents

Mr.Tejas Hilage for the Appellant

Mr.J.P. Yagnik, APP, for Respondent – State

Mr.Yogesh P. Morbale for Respondent No.2

**CORAM: S.S. SHINDE &
MANISH PITALE, JJ.**

DATED: APRIL 22, 2021

P.C.:

1. Being aggrieved by the order passed by the learned Special Judge dated 29th February, 2020 below Exhibit 11 in Special Case No.1 of 2019, the appellant has preferred this Appeal praying for quashing of the impugned order and release on bail.
2. Learned Counsel appearing for the appellant submits that the prosecution case rests upon circumstantial evidence. There are no circumstances muchless a single circumstance to connect

the appellant with the alleged offence. It is submitted that the alleged witness whose statement is recorded in support of the prosecution theory that the deceased was last seen in the company of the appellant; his statement has been recorded belatedly after 2½ months from the date of the incident. It is submitted that there is no recovery of any weapon from the appellant. There is no other incriminating material collected by the Investigating Officer during the course of investigation against the appellant and, therefore, the appellant is entitled to be released on bail. It is submitted that it is unlikely that the trial may commence in the near future and, therefore, on that ground also, the appellant deserves to be released on bail. The learned Counsel invites our attention to the chargesheet and annexures thereto and submits that it is a case of no evidence, insofar as the appellant is concerned and, therefore, the appellant is entitled to be released on bail.

3. On the other hand, the learned APP appearing for the Respondent – State invites our attention to the chargesheet and its accompaniments and submits that, there is sufficient and cogent incriminating material collected by the Investigating Officer which is

part of the chargesheet and, therefore, at this stage, the appellant may not be released on bail. She submits that in case the appellant is released, he may tamper with the prosecution witnesses and evidence.

4. Learned Counsel appearing for Respondent No.2 adopts the arguments advanced by the learned APP and in addition thereto, submits that there is a clear involvement of the appellant in the alleged offences and in case he is released on bail, there is a danger to the life of the witnesses.

5. Upon appreciating the rival contentions and perusing the grounds taken in the appeal, the annexures thereto and the evidence collected by the Investigating Officer, we are of the opinion that the prosecution has brought on record sufficient evidence which would show a *prima facie* case against the appellant. One Mr.Sagar Sanjay Bondre is the prosecution witness on the theory of last seen together. He has stated that on 16.11.2018 at about 8.30pm, he saw the deceased Sunny Awale in the company of the present accused and co-accused. Apart from it, there is an alleged recovery of the blood stained clothes of the appellant. Though it is contended by the learned Counsel

appearing for the appellant that there is a delay in recording the statement of Sagar Sanjay Bondre, on that ground, the statement of the said witness, at this stage, cannot be disbelieved. An alleged offence is punishable under section 302 and section 120B of the Indian Penal Code. The weapons are recovered from the co-accused. The complexity and involvement of the accused can be considered in depth at the time of trial. When there is a charge of conspiracy, the prosecution will have to lead circumstantial evidence by bringing on record clinching circumstances. Normally, conspiracies are hatched in secrecy and, therefore, there is a less possibility of having direct evidence and opportunity needs to be given to the prosecution to prove its case. It is not desirable to elaborate on reasons since the appellant will have to face trial. Suffice it to say that prima facie, involvement of the appellant in the alleged offence is shown by the prosecution. Apart from it, we find considerable force in the submissions of the learned APP and the learned Counsel appearing for the original informant that in case, the appellant is released on bail, he may likely to tamper with the prosecution evidence and witnesses.

6. For the reasons aforesaid, we are not inclined to entertain this Appeal. Hence, the Appeal is dismissed.

7. We direct the concerned trial Court to commence the trial immediately after the present situation due to Covid-19 pandemic comes to an end and complete the said trial from such date as expeditiously as possible and preferably within four months therefrom.

8. Appeal stands disposed off accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)