

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.498 OF 2020

Altaf Rajekhan Pathan Appellant
Versus
State of Maharashtra & Another Respondents

.....
WITH
INTERIM APPLICATION NO.2447 OF 2021
IN
CRIMINAL APPEAL NO.498 OF 2020

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Mr. Ashok Mundargi, Senior Counsel i/b. J.P. Kharge a/w.
Abhishek Yende, Advocate for the Appellant.
Ms. M.H. Mhatre, APP, for Respondent No.1-State.
Mr. Y.S. Singh, Advocate for the Applicant in IA/2447/2021.
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**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 13 OCTOBER 2021

P.C.

This is an Appeal under Section 14-A of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act') against the order dated 23 October 2020 passed by the learned Additional Sessions Judge, Karad in Criminal Bail Application No.411/2020 whereby the Appellant's bail application was rejected.

2. The Appellant is praying for his release on bail in connection with C.R. No.580/2019 registered at Karad City Police Station, District-Satara under Sections 143, 144, 147, 148, 149, 109, 302 of the Indian Penal Code, Sections 3 and 25 of the Indian Arms Act and under Sections 3(1)(r)(s), 3(2)(v) and 3(2)(va) of the Atrocities Act.

3. The Appellant was arrested on 21 August 2019 and since then he is in custody. The investigation is over and the charge-sheet is already filed. Initially the provisions of Maharashtra Control of Organised Crime Act, 1999 were applied in this case on 3 October 2019. However, those were revoked on 23 February 2020.

4. The case pertains to murder of one Pawan Solwande. The FIR was lodged on 21 August 2019 by one Mahesh Dubale. He has stated that he was the neighbour of Dipak Solwande. He was knowing Dipak's family. The deceased Pawan was Dipak's son. The deceased was belonging to Matang caste. According to the first informant he was aware that the deceased had offences registered against him at Karad City Police Station. On 20.8.2019 in the night, there was some quarrel between the deceased Pawan and one Nihal Pathan because Pawan had tried to extort money from Nihal. The Appellant is Nihal's father. Nihal had lodged his complaint at Karad City Police Station about this incident. In the

midnight between 20 August 2019 and 21 August 2019 at about 12:15 a.m., the informant was talking with one Uday Satpute near a shop. He saw one four-wheeler and three two-wheelers coming near from a lane. There were ten to twelve persons. Out of them, he knew Junaid Shaik, Samir Mujawar, Majhar Mujawar, Shivraj Ingawale and Haider Mulla. Shivraj Ingawale asked Uday Satpute about Pawan's address. He was angry and he was saying that he would not leave Pawan alive. At about 12:35 a.m., Pawan came there. Junaid Shaikh saw him. He instigated others to kill Pawan. He started running towards Pawan. Others started chasing Pawan. Junaid Shaikh and few others fired at Pawan. One of them was picking empties of the fired bullets. The informant got scared and waited at a distance. After that, the assailants went away. The informant and Uday again came back to the spot. That time they saw that Pawan's sisters Pooja and Kajal had come there. With their help and help of neighbours Pawan was sent to Sahyadri Hospital, Karad but there he was declared dead. On this basis, the FIR was lodged.

5. The investigation was carried out and the Appellant was arrested on 21 August 2019 as mentioned earlier.

6. The Appellant had approached the Additional Sessions Judge, Karad for his release on bail on three occasions and the last order dated 23 October 2020 is challenged by way of this appeal.

7. Heard Shri Ashok Mundargi, learned Senior Counsel for the Appellant, Smt M.H. Mhatre, learned APP for the State and Shri Y.S. Singh, learned Advocate for the Applicant in IA/2447/2021.

8. Learned Senior Counsel for the Appellant submitted that there is absolutely no material against the present Appellant. The eye witnesses have not named the Appellant. In fact, it is not the prosecution case that the Appellant was one of the assailants or had accompanied the assailants. There is no recovery at his instance. The quarrel was between the Appellant's son and the deceased. Therefore, there was no direct motive against the Appellant. There is no evidence of any conspiracy against the Appellant.

9. Learned APP as well as the learned Counsel for the intervenor opposed this application. They submitted that the crime was a result of the conspiracy hatched between the Appellant, his son and the assailants. There are CDRs showing conversation between the Appellant and his son and then between his son Nihal and Junaid. Therefore, it cannot be said that the Appellant has no connection with the crime.

10. Learned Senior Counsel for the Appellant as well as learned Counsel for the Respondent also relied on the statements of two witnesses, who have referred to the Appellant's talk with

father of the deceased.

11. We have considered these submissions and with the assistance of the learned Counsel for the parties we have perused the documents from the charge-sheet attached to this Appeal. The learned APP, on instructions, submitted that apart from the CDR statements referring to conversation with father of the deceased; there are no other important documents or statements against the Appellant. Therefore, we have perused and considered the documents attached to this appeal memo.

12. Apart from the FIR, as submitted by both the parties, the statement of Dipak Solwande has some relevance. He was father of the deceased. He has stated that on 20 August, 2019 he came to know that the Appellant had lodged the FIR against Pawan. One Vijay Vaydande had called the Appellant to make enquiries about that complaint. At that time, Dipak had told the Appellant that Pawan had no connection with that incident and that his name should not have been taken. At that time the Appellant had told Dipak that they should settle the matter by meeting personally. However instead of meeting Dipak, the Appellant had telephonically called him and had told him that his son and others were not willing to listen and that they should wait for some time. Based on this, according to Dipak, Pawan was murdered at the instance of the Appellant and his son Nihal.

13. The statement of Vijay Vaydande is also relevant. This witness's name was taken by Dipak in his statement. Vijay has stated that on 20 August 2019 at about 2:00 p.m., Dipak had called him near his house. Dipak had told him that there was some dispute between Pawan and Nihal and that Vijay should call the Appellant to settle the matter. At that time somebody called the Appellant and asked about the dispute. At that time the Appellant had told them that he would meet them for discussion. However, the Appellant telephonically called them and told them that the boys were not willing to listen and they would discuss it once the anger entertained by the boys had subsided.

14. These statements indicate that the Appellant was aware of the dispute between Pawan and Nihal and that he had promised to look into the matter for settlement. After some time he had telephonically told the father of the deceased and others that the boys were not willing to listen. This version does not really incriminate the Appellant. At the highest, it can be said that the Applicant could not settle the matter and his son and others were not in a mood to listen. Those statements by themselves do not indicate that it was the Appellant's idea to commit murder of the deceased or that there was some instigation on his part.

15. There is another statement of one Ganesh Pawar. He has stated that on 19 August 2019 Junaid Shaikh had told this witness

that Pawan was asking for extortion money from Nihal and that this witness should settle the matter. Ganesh Pawar had gone to meet Nihal, who had told this witness that he would pay on one occasion and it should be settled. Ganesh Pawar's friend Sunny Vaydande called Pawan to settle the matter but Pawan did not listen to him and did not settle the matter.

16. This statement also speaks about the dispute between Pawan and Nihal and there is no reference to the Appellant.

17. Learned APP invited our attention to the call details. On 19 August 2019 at about 9:12 p.m. there was conversation between the Appellant and his son Nihal. After that at about 9:38 p.m. the main accused Junaid had called the Appellant's son Nihal. Therefore, learned APP wanted to establish a link between these phone calls to show complicity of the Appellant. We are unable to accept this submission. The phone call between the Appellant and his son cannot be said to be unusual. Thereafter there was a gap of at least twenty minutes and at that time also the informant's son had received a phone call from the main assailant Junaid. Therefore, to use these phone calls to connect the Appellant with the crime would be too far fetched. Learned APP, on instructions of the investigating officer made a statement that besides these circumstances there is no material against the present Appellant.

18. In this view of the matter, considering very weak case against the Appellant, he deserves to be released on bail. It is made clear that all the observations made in this order are restricted to passing of this order and the trial Court shall not be influenced by any of the observations while deciding the trial. Hence, the following order:

ORDER

- (i) In connection with C.R. No.580/2019 registered with Karad City Police Station, District-Satara, the Appellant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Criminal Appeal stands disposed of accordingly. In view of disposal of the Appeal, Interim Application No.2447/2021 does not survive and same also stands disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)