

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

CRIMINAL APPEAL NO. 97 OF 2021

Vishal Sadhuram Ridhlan

...Appellant

Versus

The State of Maharashtra & Ors.

...Respondents

ALONG WITH
CRIMINAL APPEAL NO. 582 OF 2021

Ritesh Ramchandra Gavand

...Appellant

Versus

The State of Maharashtra & Ors.

...Respondents

...

Mr. Raviraj Parmane for appellant in both.

Mr. Ganesh Bhujbai appointed for Respondent No. 2 and 3 in both.

Mrs. S.D. Shinde, APP for State.

...

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

DATE : 26th JULY, 2021.

ORAL JUDGMENT (Per N.J. Jamadar, J.):

1. These appeals under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015, are directed against the orders passed by the learned Special Judge on 09.09.2020 in Atrocity Special Case No. 204/2019, whereby respective applications of appellants for bail came to be rejected.

2. Heard, Mr. Parmane, the learned counsel appearing for the appellants, Mrs. S.D. Shinde, the learned APP appearing for Respondent-State and Mr. Ganesh Bhujbai, the learned counsel who has been appointed to espouse the cause of Respondent No. 2 and 3.

3. Initially, both the appellants had filed a single appeal, bearing Appeal no. 97/2021. Subsequently, the appellant Mr. Ritesh Gavand filed separate appeal bearing no. 582/2021. Since, Mr. Ganesh Bhujbal was appointed to represent the Respondent No. 2 and 3 in Criminal Appeal No. 97/2021, we have appointed Mr. Bhujbal in Criminal Appeal No. 582/2021 as well.

4. Admit.

5. With the consent of learned counsel appearing for the parties, heard finally.

6. The appellants have been arraigned for the offences punishable under Section 302, 307, 143, 146, 148, 148 and 149 of IPC and Section 37(1)(3) read with 135 of Bombay Police Act and Section 3(1)(r), 3(2)(v), 3(2)(va), of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015.

7. The gravamen of indictment against the appellants is that on 8th March, 2021, in between 9.30 to 10.15 p.m. at Sector-18, Nerul, the appellants and others formed an unlawful assembly and in prosecution of the common object of unlawful assembly committed murder of Rajesh Ingle and attempted to commit murder of Vaibhav Sadavar, the injured. The co-accused Avinash allegedly assaulted deceased Rajesh by means of knife and also caused grievous life threatening injuries on the person of Vaibhav, the injured.

8. Mr. Parmane, learned counsel for the appellants urged that the report under Section 173 of the Code of Criminal Procedure and the documents annexed with it, including statement of injured Vaibhav and the report lodged by Mr. Hemant Mehar, the first informant, do not indicate that the appellants had played an active role in the alleged occurrence. On the contrary, in the First Information Report dated 9th March, 2019, the appellants were not at all named as the persons who allegedly assaulted the deceased and injured Vaibhav. Even in the statement of injured Vaibhav, recorded on 9th March, 2019 at D.Y. Patil Hospital, the appellants were not named. An omnibus statement was made therein that there were 8 to 9 other persons apart from the three named

assailants. The names of the appellants along with Mr. Rohit Singh and Amit Ridhlan surfaced, for the first time, in the supplementary statement of the injured Vaibhav Sadavat recorded on 12th March, 2019. In the said statement also, the only role attributed to the appellants was that of having assaulted the deceased and injured by fist and kick blows.

9. In the aforesaid circumstances, this Court was persuaded to release the co-accused Rohit Singh (in Criminal Appeal No. 1094 of 2019), on bail. The role attributed to the appellants is identical. Thus, the appellants deserve to be enlarged on bail, on the ground of parity as well, submitted Mr. Parmane, the learned counsel for the appellants.

10. The learned APP, resisted the prayer for releasing the appellants on bail on the ground that the appellants have been arraigned for serious offences of committing murder and attempt to commit a murder. In the event of release of appellants on bail, there is a genuine apprehension of tempering with evidence and threatening the witnesses.

11. Mr. Ganesh Bhujbal, the learned counsel appointed to espouse the cause of the private respondents, also resisted the

prayer of the appellants to enlarge them on bail. It was submitted that there is material to show that the appellants were members of the unlawful assembly and, thus, the appellants cannot be absolved of the liability, though no role of assault by means of weapons is attributed to appellants.

12. We have perused the report under Section 173 of Cr.P.C., and the documents annexed with it. We have also perused the judgment of this Court in Criminal Appeal No.1094 of 2019 (Coram: B.P. Dharmadhikar, A.CJ. & N.R. Borkar, J.) dated 28th February, 2020.

13. From the perusal of first information report, which was lodged by Hemant Mehar, a friend of the injured Vaibhav Sadavat, it becomes abundantly clear that the injured Vaibhav had named only three assailants namely Avinash Jadhav, Omkar Rathod and Amid *alias* Hamid Shaikh. The statement of injured Vaibhav dated 9th March, 2019, which came to be recorded at D.Y. Patil Hospital, reveals that even Vaibhav had identified the above named persons as the assailants. A specific role of assault by means of knife was attributed to co-accused Avinash Jadhav. The submission on behalf of appellants that the name of the appellants came in the frame for the first time on 12th March, 2019, when the supplementary

statement of the injured Vaibhav came to be recorded, appears well founded. In the supplementary statement, injured Vaibhav stated that apart from the named assailants, appellants herein, Rohit Singh and Vishal Ridhlan were also present and they assaulted him and the deceased by means of fist and kick blows. On the one hand, the appellants were not initially named as the assailants as members of the unlawful assembly. On the other hand, a minor role is attributed to the appellants. Thus a prima facie case to exercise the discretion in favour of the appellants is made out. In the aforesaid backdrop, the aspect of parity assumes significance. Rohit Singh, who was released by this Court, was attributed the very same role, which is attributed to the appellants. We do not find any material which distinguishes the role attributed to the appellants from that of Rohit Singh. A case for grant of bail on the ground of parity is also made out.

14. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions. We are thus inclined to allow the appeals. Thus, following order:-

ORDER

- I) The appellant in Criminal Appeal No. 97/2021 i.e. Vishal Sadharam Ridhlan and appellant in Criminal Appeal No. 582/2021 i.e. Ritesh Ramchandra Gavand, be released on bail on

furnishing a PR bond of Rs. 20,000/- each and one or two solvent sureties in the like amount to the satisfaction of the learned Special Judge.

- II) The appellants shall furnish the address at which they would be available during the pendency of trial, along with contact numbers.
- III) The appellants shall not give threat or inducement to any of the prosecution witnesses and shall not tamper with prosecution evidence in any manner whatsoever.
- IV) The appellants shall attend the proceedings before the learned Special Judge, regularly and co-operate in expeditious conclusion of the trial.
- V) In the event of default on the part of the appellants to abide by any of the aforesaid conditions, the State shall be at liberty to move for cancellation of bail.
- VI) The observations made herein above are for the limited purpose of determining the entitlement for bail. The learned Special Judge shall decide the guilt or otherwise of the accused in Special Case No. 204/2019, uninfluenced by the aforesaid observations.

- VII)** We further record that Mr. Ganesh Bhujbal has rendered able assistance to this Court in deciding both these appeals. We quantify his fees at Rs. 10,000/- in each appeal, and direct that the fees be disbursed expeditiously and preferably within one month from receipt of copy of this order.
- VIII)** Both the appeals stands disposed of.
- IX)** Parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)