

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 121 OF 2021**

Arvind @ Sonya Ganesh Ghuge,
Age : 24 years, Occ. Labour,
R/at : Santosh Sawant, Vijaynagar,
Behind Jogeshwari Hotel,
Near Ramesh Kale, Kalewadi, Pune

... Appellant

Versus

1. The State of Maharashtra
through Wakad Police Station, Pune,
Dist. Pune.

2. Sheshrav Rangnath Angarakh
Age : Major, Occ : Nil,
R/at : Santosh Nivas Police Colony,
Rahatani, Pune

....Respondents

Mr.Suhas B. Rohile for appellant.

Mr. V.B. Kondedeshmukh, APP for respondent No.1.

Mr.Karl Rustomkhan, Advocate appointed by Court for respondent No.2.

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

Reserved for Judgment on : 16th September 2021.

Judgment Pronounced on : 22nd September 2021.

JUDGMENT (PER N.J. JAMADAR, J.)

1. This appeal under section 14-A of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SCST Act, 1989') is directed against an order dated 1st December 2020 passed

by learned Special Judge, Pune, in Cri. B.A. No.3254/2020, whereby the prayer of the appellant-accused No.2 to enlarge him on bail, came to be rejected.

2. The background facts leading to this appeal, can be stated in brief as under :-

(a) Santosh (hereinafter to as 'the deceased') was the son of Sheshrao-the first informant. Ganesh Pawar, accused No.1 had advanced money to the deceased. There was a dispute between the deceased and Ganesh over the repayment of the amount borrowed by the deceased. On 16th August 2020, the deceased left the house at about 9:30 a.m. As the deceased did not return and his whereabouts could not be traced, initially the first informant lodged a missing report at Wakad Police Station. On 16th August 2020 itself, the deceased had informed his daughter Sejal that he was with Ganesh Pawar and his two friends at Kasarsai and would return home late. Upon being inquired, the accused Ganesh gave evasive replies. The first informant thus lodged report on 2nd August 2020 suspecting foul-play at the hands of

Ganesh on account of the dispute over repayment of the loan amount. Accused No.1-Ganesh came to be arrested. Pursuant to the discovery made by accused No.1, the body of the deceased was exhumed from a spot near Dream Villa, Phase-I, Kasarsai, Taluka Mulashi. Two of the co-accused namely Mangesh Jagtap and Pradip Kumar Lalji came to be arrested on the basis of the said disclosure statement. In a further disclosure statement made by accused Ganesh, the appellant was named as an accomplice.

(b) During the course of investigation, it transpired that a criminal conspiracy was hatched to commit the murder of the deceased and in pursuance of the said conspiracy, the deceased was taken to the said spot in a Scorpio vehicle and was done to death and the dead body was buried in a ditch with a view to cause the disappearance of evidence of commission of crime. Since the deceased belonged to scheduled caste and the accused were fully aware of the said fact, post completion of investigation, charge-sheet came to be lodged for the offences punishable under sections 363,

364, 302, 201 and 120-B of the Indian Penal Code, 1860 ('Penal Code') and sections 3(2)(v), and 3(2)(va) of the SCST Act, 1989.

(c) The appellant preferred an application for bail. By the impugned order, the learned Special Judge was persuaded to reject the application. The learned Special Judge was of the view that the appellant being an employee of Ganesh, was bound to follow the instructions given by Ganesh. Moreover, the appellant had visited the house of the first informant, many a times, inquiring about the whereabouts of deceased. This conduct of the appellant, according to learned Special Judge, indicated the complicity of the appellant. It was further observed that there was a strong possibility of tampering with evidence and threatening the witnesses as the appellant is a resident of the same village in which the first informant, the widow and daughters of the deceased reside.

(d) Being aggrieved by and dissatisfied with the rejection of the prayer for bail, the appellant is in

apéal.

3. We have heard Mr. Suhas Rohile, the learned counsel for the appellant, Mr. Kondedeshmukh, the learned Assistant Public Prosecutor for the State and Mr.Karl Rustomkhan, the learned Advocate who was appointed to espouse the cause of respondent No.2-first informant. With the assistance of the learned counsels for the parties, we have perused the material on record including the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

4. Admit. Taken up for final hearing.

5. Mr. Rohile, the learned counsel for the appellant strenuously urged that there is not a shred of material to indicate *prima-facie* complicity of the appellant in the alleged offences. Indisputably, the appellant was not named in the first information report lodged on 2nd September 2020. Nor the appellant was named by any of the witnesses whose statements have been recorded by the Investigating Officer. Name of the appellant, according to Mr. Rohile, surfaced for the first time in the supplementary statement of the first informant recorded on 4th September 2020, post recovery of the dead body of the deceased pursuant to the disclosure statement made by prime accused Ganesh. Subsequent

thereto, in the third disclosure statement given by accused Ganesh, on 6th Sep 2020, the appellant was named as an accomplice. Mr. Rohile would urge that in the face of the aforesaid material on record, the learned Special Judge committed an error in rejecting the prayer for bail on the premise that there was material to show the complicity of the appellant.

6. In opposition to this, Mr. Kondedeshmukh, the learned APP endeavoured to support the impugned order. Inviting the attention of the Court to the supplementary statement of the first informant, wherein it was mentioned that the appellant had visited the house of the first informant to inquire about the deceased, after he went missing, Mr. Kondedeshmukh would urge that the learned Special Judge was justified in taking into account the aforesaid conduct of the appellant.

7. Mr. Rustomkhan, the learned counsel for respondent No.2-first informant, supplemented the submissions of Mr. Kondedeshmukh, the learned APP. Mr. Rustomkhan would submit that the conduct of the appellant as well as Ganesh, the prime accused, in visiting the house of the first informant and making inquiries about the deceased was driven by a design to misguide the first informant and the investigating agency. Mr. Rustomkhan

further submitted that in the backdrop of the charge under section 120-B of the Penal Code, the circumstances which preceded, attended and succeeded the occurrence are required to be taken into account. Since conspiracy is hatched in secrecy, there would be no direct evidence. From this standpoint, according to Mr. Rustomkhan, the aforesaid conduct of the appellant assumes material significance. Mr. Rustomkhan invited the attention of the Court to the statement Mr. Sharad Khonde, in support of the submission that the charge of criminal conspiracy is *prima-facie* made out.

8. In order to lend support to the aforesaid submission, Mr. Rustomkhan placed a very strong reliance on the judgment of the Supreme Court in the case of ***Pratapbhai Hamirbhai Solanki Vs. State of Gujarat & Anr.***¹, wherein in the context of the charge of criminal conspiracy, the significance of the circumstances before, during and after the occurrence to infer the existence of conspiracy was expounded in the following words :

“23 In the said case it has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal

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conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused."

9. We have given careful consideration to the submissions advanced across the bar. Undoubtedly, the prosecution case rests on circumstantial evidence. Three of the circumstances pressed into service against the appellant are (i) the appellant had visited the house of the first informant and made inquiries about the whereabouts of the deceased; (ii) the prime accused Ganesh had named the appellant as an accomplice in the disclosure statement made on 6th September 2020; and (iii) Mr. Sharad Khonde stated that the prime accused Ganesh had named the appellant as one of the members of the group which had conspired to kill the deceased.

10. To start with, the third circumstance first as it bears upon the aspect of last seen as well arrayed against the appellant by the learned Special Judge. Mr. Sharad Khonde stated that on the day of occurrence, while the deceased was travelling with Ganesh Pawar and his driver Paigambar in a Scorpio, which was then being driven by the said witness, the accused Ganesh had asked

Paigambar to execute the plan to commit the murder of the deceased, as agreed. Mr. Khonde further stated that upon his attempts to dissuade accused Ganesh from causing harm to the deceased, the accused Ganesh had stated that he, other co-accused and the appellant had already decided about the manner in which the deceased would be killed.

11. It is imperative to note that the statement of Mr. Sharad Khonde *prima-facie* indicates that the appellant had not accompanied the deceased and the accused Ganesh on 16th August 2020 in the Scorpio car, which was then being driven by the said witness. To put it differently, Mr. Sharad Khonde does not claim to have seen the appellant with the deceased and prime accused Ganesh on the day of occurrence. Even in the statement of Sejal, the daughter of the deceased, to whom the deceased had allegedly informed on phone that he was at Kasarsai with Ganesh and his two friends, the name of the appellant did not surface. In the circumstances, in our view, there was no material to record a *prima-facie* observation that the deceased was last seen in the company of the appellant.

12. In the absence of material to demonstrate that the appellant was either in the company of the deceased or prime accused

Ganesh on the day of occurrence, the material against the appellant gets restricted to conduct of the appellant in visiting the house of the first informant to inquire about the deceased. It is the claim of the prosecution that the appellant was working for Ganesh. The appellant used to visit the house of the deceased on the instructions of Ganesh. In this view of the matter, at this juncture, the conduct of the appellant in visiting the house of the first informant cannot be said to be unnatural.

13. Evidently, the appellant was named as an accomplice in the third disclosure statement allegedly made by accused Ganesh on 20th September 2020. Upto that point of time, the prosecution case was that the deceased was killed by accused Ganesh and two of his named accomplices. Apart from the said disclosure statement made by accused Ganesh, which is not legally admissible qua non-maker co-accused, there does not appear any other material which establishes *prima-facie* nexus of the appellant with either the crime or prime accused Ganesh. It is not the case that any incriminating material has been recovered at the instance of the appellant which connects him with the crime. Undoubtedly, a conspiracy is hatched in secrecy and an inference is required to be drawn on the basis of the attendant circumstances, as direct

evidence of conspiracy is seldom available. However, the circumstances ought to be of definite tendency.

14. In the case at hand, in the face of the aforesaid material, we are persuaded to hold that the appellant has made out a *prima-facie* case for grant of bail. The apprehension on the part of the investigating agency can be taken care of by imposing appropriate conditions.

15. We are, thus, inclined to hold that the impugned order of rejection of bail is required to be interfered with. The appeal thus deserves to be allowed.

16. Hence, the following order :

O R D E R

- (i) The appeal stands allowed.
- (ii) The impugned order dated 1st December 2020 passed by the learned Special Judge in Cri. B.A. No. 3254 of 2020 stands quashed and set aside.
- (iii) The appellant-Arvind @ Sonya Ganesh Ghuge be released on bail on furnishing a P.R. Bond in the sum of Rs.25,000/- and one or two sureties in the like amount, to the satisfaction of the learned Special Judge, Pune.
- (iv) The accused-appellant shall not tamper with

prosecution evidence and/or give threat or inducement to informant or any other prosecution witness.

(v) The accused shall not enter the local limits of Rahatani for a period one year from today, except for attending the proceeding before the Special Court.

(vi) The accused shall regularly attend the proceeding before Special Court and co-operate with the learned Special Judge in the expeditious disposal of the said case.

(vii) The accused shall furnish his current address and the address at which the accused would stay for the period of one year to the learned Special Judge, Pune and the Investigating Officer.

(viii) The accused shall file an undertaking, within a period of two weeks from today, before the learned Special Judge, Pune, to comply with the conditions (iv) to (vii) incorporated hereinabove.

17. We, however, clarify that the consideration is confined to entitlement for bail and the learned Special Judge shall not be influenced by any of the observations made hereinabove in the further proceedings of the trial.

18. We quantify the fees of Mr. Karl Rustomkhan, the learned counsel appointed to espouse the cause of respondent No.2, at Rs.10,000/-. The Member Secretary, High Court Legal Services Committee, Mumbai, shall make an endeavour to pay the aforesaid amount to Mr.Rustomkhan, within a period of three weeks from the date of communication of this judgment and order.

19. All concerned to act on an authenticated copy of this order.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]