

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.120 OF 2021

Jagdish Murlidhar Kate ...Appellant
vs.
The State of Maharashtra and Another ...Respondents

**WITH
CRIMINAL APPEAL NO.128 OF 2021**

Kailas Murlidhar Kate ...Appellant
vs.
The State of Maharashtra and Another ...Respondents

Mr. Niranjan Mundargi i/b. Ms. Keral Mehta, for the Appellants.
Mr. Niranjan Mogre i/b. Mr. Sujay Gangal, for Respondent No. 2.
Mr. V.B.Konde-Deshmukh, APP for the Respondent-State.

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

JUDGMENT RESERVED ON : 2nd SEPTEMBER, 2021
JUDGMENT PRONOUNCED ON: 28th SEPTEMBER, 2021

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

1. These appeals under section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC and ST Act, 1989'), are directed against the order dated 14th October, 2020 passed by the learned Special Judge, Pune on an application (Exhibit 3), in Special Case No. 453 of 2020, whereby the prayer of the appellants Jagdish (original accused No. 4) and Kailash (original accused No. 3) for release on bail came to be rejected.

2. The background facts leading to these appeals can be stated in brief as under:

a] Viraj Jagtap (the deceased) was the nephew of Jitesh Jagtap (first informant). The deceased allegedly had a love affair with the daughter of appellant Jagdish. Since the deceased was a member of Scheduled Caste, the appellant Jagdish and his brother of Kailash, Hemant and Harshad, the sons of Kailash, Sagar and Rohit, the sons of Jagdish, resented the liaison between the deceased and the daughter of Jagdish. Allegedly, in the past, there were instances of threatening and hurling abuses at the deceased.

b] On 7th June, 2020 at about 10.00 pm appellant Kailash allegedly made a call on the cell phone of the first informant and, amidst hurling the abuses over the caste of the first informant and the deceased, informed the first informant that they had assaulted the deceased near Shiv Bakery and the later should be shifted therefrom. The first informant reached the said spot along with his family members and neighbours. The deceased was found lying thereat, in an injured condition. The deceased allegedly informed the first informant that he was knocked down by a small tempo. The accused Hemant, Harshad, Sagar, Rohit, Jagdish and Kailash alighted from the said tempo armed with iron rod and stones. He attempted to ran away. The accused chased him. Accused Hemant

assaulted him by means of an iron rod on his head. Accused Sagar bet him by means of stone, on the back. He was caught hold of by Harshad, Kailash and Jagdish, and Hemant inflicted blows by means of iron rod. The appellant Jagdish abused the deceased with reference to his caste and spat on his face.

c] The deceased was shifted to Birla hospital. He succumbed to injuries on 8th June, 2020. A report was lodged at Sangavi police station for the offences punishable under section 302, 143, 147, 148, 148 and 149 of the Indian Penal Code, 1860 (the Penal Code) and 3(1)(r)(s), 3(2)(va), 3(2)(v) of the SC and ST Act, 1989. Eventually, post completion of investigation, the chargesheet came to be lodged against the appellants and the abovenamed co-accused.

d] The appellants preferred application (Exhibit 3) for bail. The Special Judge, Pune was persuaded to reject the application as the learned Judge was of the view that the matter was one of the honour killing, as the accused opposed the liaison between the deceased and the daughter of appellant Jagdish. The learned Judge recorded that the statements of Kailash Kunjir and Pranay Kamble, who were the eye witnesses to the occurrence, prima facie indicated the complicity of the appellants. Adverting to the possibility of tampering with evidence and threatening the witnesses and also breach of law and order, the learned Special Judge declined to exercise the discretion in favour of the appellants.

e] Being aggrieved, the appellants are in appeal.

3. Admit. Taken up for final disposal.

4. We have heard Mr. Niranjan Mundargi, the learned counsel for the appellants, Mr. Konde-Deshmukh, learned APP for the State and Mr. Mogare, learned counsel for respondent No. 2-first informant in both the appeals. 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 and its accompaniments.

5. Mr. Niranjan Mundargi, learned counsel for the appellants, strenuously submitted that the material on record, even if taken at par, does not make out a prima facie case against the appellants. The learned Special Judge, according to Mr. Mundargi, misdirected herself in rejecting the application for bail laying emphasis on the fact that the case appeared to be one of the honour killing, without properly evaluating the nature of the material against the appellants.

6. Taking the Court through the statements of the first informant, Abhishek Hande, Anant Dangre and Pranay Kamble, who were stated to be the eye witnesses to the occurrence, Mr. Mundargi canvassed a submission that the very presence of both the

appellants at the scene of occurrence cannot be said it to have been prima facie made out. Since the appellants have been roped in by invoking section 149 of the Penal Code, in the absence of material which demonstrates that the appellants were the members of the unlawful assembly, the appellants could not have been declined the relief of bail, urged Mr. Mundargi. Emphasis was laid on the fact that none of the eye witnesses had named any of the appellants as one of the assailants.

7. Per contra, Mr. Konde-Deshmukh, learned APP submitted that the genesis of the occurrence cannot be lost sight of. The instances, which had occurred in the past, indicate the strong animosity of the appellants and the co-accused towards the deceased over the alleged love affair. In this backdrop, if the allegations in the first information report are considered, it becomes evident that the deceased was done to death on account of the said animosity. In the circumstances, according to Mr. Konde-Deshmukh, learned APP, the learned Special Judge was within her rights in rejecting the prayer for bail.

8. Mr. Mogare, learned counsel for respondent No. 2, stoutly submitted that there is ample material to show the presence of appellant Jagdish at the scene of occurrence. Attention of the Court

was invited to the statement of Moulana Shaikh, who claimed to have witnessed the deceased being knocked down by the co-accused, who was at the wheel of the tempo, and the subsequent assault upon the deceased. Mr. Mogare further urged with a degree of vehemence that the material on record makes out a prima facie case of the offences having been committed in pursuance of a criminal conspiracy. Thus, despite section 120-B of the Penal Code having been not invoked, charge can be legitimately framed for the offence punishable under section 120-B of the Penal Code. Resultantly, according to Mr. Mogare, the edifice of the submission on behalf of the appellants that in the absence of material to prima facie indicate the presence of the appellants at the scene of occurrence, the appellants are entitled to be enlarged on bail, gets dismantled.

9. We have given our anxious consideration to the submissions canvassed across the bar. We have carefully perused the first information report lodged by Jitesh Jagtap and his supplementary statement recorded on 10th June, 2020, the statements of Abhishek Hande, Anant Dongre and Pranay Kamble, who claimed to have witnessed the occurrence, from the perspective of the prima facie complicity of the appellants Jagdish and Kailash.

10. To begin with, it is imperative to note that the first information

report and the supplementary statement of Jitesh can be resorted to for two purposes. First, the alleged oral dying declaration made by the deceased. Second, the information about the assault upon the deceased having been furnished by the appellant Kailash by making a call on the cell phone of the first informant.

11. The deceased allegedly informed the first informant that the assailants including the appellants Kailash and Jagdish alighted from the tempo, chased him down and assaulted him. According to informant, this declaration was made by the deceased when the first informant reached Shiv Bakery and found the deceased in an injured condition. In contrast, Abhishek Hande stated that after the occurrence, the deceased was shifted to Lotus Hospital with the assistance of Kishor Salve, and the informant and others reached at Lotus Hospital. Mr. Pranay Kamble, another eye witness, also stated that he and another boy had shifted the deceased to Lotus hospital on his Aactiva scooter and the family members of the deceased upon being informed, reached Lotus hospital. These statements of eye witnesses, ex-facie, run counter to the claim of the first informant that he reached the place where the deceased was lying, the later disclosed the incident and, thereafter, he was shifted to the hospital.

12. We find substance in the submission of Mr. Mundargi that the

alleged eye witnesses have consistently stated that three assailants assaulted the deceased in front of Shiv Bakery. Abhishek Hande has named Hemant, Sagar and Rohit as the assailants. Hemant and Sagar allegedly assaulted the deceased by means of iron rod and Rohit by means of fist and kick blows. Anant Dongre, who worked at Shiv Bakery, also stated that three persons chased the deceased to a place in front of Shive Bakery. One of them was identified by the said witness as Hemant Kate. Pranay Kamble, also claimed to have seen two persons chasing the deceased Viraj. One of those two persons assaulted the deceased by means of iron rod and another by means of fist and kick blows.

13. In the face of the aforesaid statements, there is no prima facie material to show that the appellants were present at the scene of occurrence where the deceased was allegedly assaulted and were thus the members of the alleged unlawful assembly. Reliance sought to be placed by Mr. Mogare on the statement of Moulana Shaikh does not advance the cause of the submission on behalf of the prosecution. Moulana Shaikh also adverts to the presence of the accused Hemant, Rohit and Sagar Kate near Dutt Mandir. According to Moulana Shaikh, an altercation and scuffle ensued between the accused and the deceased. As the accused mounted assault upon the deceased, the later ran towards the Mahadev temple. The accused

Hemant took out an iron rod from the tempo and chased the deceased. Accused Sagar and Rohit followed them. It is true Moulana Shaikh refers to arrival of Jagdish at the place, where he was replacing the tyre of the water tanker of appellant Jagdish. But, post occurrence. In addition to this, Gangayya Velsure, a neighbor of the accused, stated that after accused Hemant, Sagar, Rohit, Harshad ran towards the Shankar temple, father and uncle of Harshad (the appellants herein) came out of their homes.

14. So far as the complicity of Kailash, to the claim of the first informant that Kailash had informed him on cell phone that the deceased was assaulted, support was sought to be drawn from the statement of Kailash Kunjir who claimed to be a common friend of first informant and Kailash Kate. He stated that after the occurrence, accused Kailash had called him and, in his presence, the accused Kailash spoke with Jitesh, the first informant. The statement of Kailash, however, does not shed light on the details of the conversation between the accused Kailash and the first informant.

15. The situation which thus obtains is that there is no material to prima facie demonstrate that the appellants were the members of the assailant party. Conversely, the eye witnesses have stated that

three named persons assaulted the deceased. Undoubtedly, the offences are of grave nature. We do not propose to question, for a moment, the justifiability of the inference drawn by the learned Special Judge that the matter could be one of honor killing. However, in the absence of prima facie material to show that the appellants were also part of the group of the assailants, it would be unjustifiable to detain the appellants for the reason that the appellants are the immediate family members of the named assailants. Thus, the appellants can be said to have made out a prima facie case for grant of bail.

16. The appellants appear to have roots in society. The apprehension on the part of the prosecution of tampering with the evidence and threatening the witnesses can be taken care of by imposing appropriate conditions. We are, therefore, inclined to exercise the discretion in favour of the appellants.

17. For the foregoing reasons, the appeal deserves to be allowed. Hence, the following order.

ORDER

- 1] The Criminal Appeals stand allowed.
- 2] The impugned order dated 14th October, 2020 passed by the

learned Special Judge, Pune on the application (Exhibit 3) in Special Case No. 453 of 2020, stands quashed and set aside.

3] The appellants Jagdish Murlidhar Kate (accused No.4) and Kailas Murlidhar Kate (accused No.3) be released on bail on furnishing a P.R Bond in the sum of Rs. 50,000/- each, with one or two sureties in the like amount to the satisfaction of learned Special Judge, Pune subject to following conditions:

- (i) The appellants shall not tamper with the prosecution evidence.
- (ii) The appellants shall not contact the first informant or any of the prosecution witnesses, nor give threat or inducement to any of the prosecution witnesses.
- (iii) The appellants shall not enter the area falling within the limits of Sangavi police station, Pune for a period of one year from the date of their release on bail.
- (iv) The appellants shall furnish the details of their permanent addresses and the place at which they will be staying during the aforesaid period of one year, along with their cell phone numbers to the investigating officer and the learned Special Judge.
- (v) The appellants shall not leave India without prior permission of the learned Special Judge.
- (vi) The appellants shall regularly attend the proceeding in Special Case No.453 of 2020 before the learned Special Judge, Pune.
- (vii) In the event of two consecutive defaults, the prosecution shall

be at liberty to move for cancellation of bail.

(viii) Within a period of two weeks from their release from prison, the appellants shall file an undertaking incorporating conditions No. (i) to (vi) before the learned Special Judge, Pune.

4] By way of abundant caution, it is clarified that the observations made in this judgment and order are limited to the consideration of the question of grant of bail to the appellants and they shall not be construed as an expression of opinion which bears on the merits of the matter at the trial. The learned special Judge shall proceed with the trial against the appellants and the co-accused uninfluenced by the observations made hereinabove.

5] The appeals stand accordingly disposed of.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)