

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 665 OF 2021

Amit Vijay Redlan
Age – 21 years,
R/at Room No.325, Shivaji Nagar
Zopadpatti, Near LP Bridge,
Shah Export Ltd.,
Nerul Node, 3 (E), Navi Mumbai,
Presently Lodged at Taloja Central Jail ... Appellant.

V/s.

The State of Maharashtra
(Through Nerul Police Station, Navi Mumbai)

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2. Hemant Vilas Meher
R/at House No. 234, Sarsole Village,
Sector – 6, Nerul, Navi Mumbai
3. Sima Rajesh Ingale
R/at House No.475, Shivaji Nagar Slums,
Near LP. Bridge, Nerul MIDC, Nerul ... Respondents.

Ms.Suvarna Yadav for the Appellant.
Ms.S.D.Shinde, APP for the Respondent- State.
Mr.Prasad Kulkarni for Respondent No.2.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 8 December 2021.

ORAL ORDER : (Per Nitin Jamdar, J.)

Admit. Taken up for disposal by consent of parties.

2. This appeal is filed under section 14A of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015. The Appellant had applied for bail before the Sessions Judge in Sessions Case No.204/2019, which was rejected by order dated 10 July 2021. The Appellant has challenged the said order and also prayed to be released on bail.

3. The Appellant is Accused No.5 in Sessions Case No.204/2019 arising out of C.R.No.114/2019 dated 9 March 2019 registered with Nerul Police Station, Navi Mumbai for the offences punishable under sections 302, 307, 143, 144, 147, 148, 149 read with 34 of the Indian Penal Code and section 3(1)(r), 3(2)(v), 3(2)(va) of the SC & ST (Prevention of Atrocities) Act and sections 37(2)(3) and 135 of the Bombay Police Act.

4. It is the case of the Prosecution that on 8 March 2019 when the Informant with his friend was walking in the vicinity of his residence, he received a call from his friend Vaibhav that he was assaulted by Accused No.1- Avinash Jadhav. When he reached the spot, he found Vaibhav was injured and Rajesh Ingale was lying dead in a pool of blood. He asked Vaibhav about the incident and Vaibhav told him that the Accused Avinash Jadhav with other two

accused Omkar Rathod and Amit had assaulted him and his friend Rajesh, out an old enmity. Crime was registered with Nerul Police Station. On 9 March 2019, Vaibhav gave a statement in which he clarified that Amit is a muslim boy. At that time he also stated that apart from Omkar Rathod and Amit, the assailants, there were other present who also assaulted him with fist, blows and kicks. On 12 March 2019, a supplementary statement of Vaibhav was recorded wherein he clarified that Amid @ Hamid Shaikh as assailant using sharp and deadly weapons and Amit Redlan, present Appellant along with Rohit Singh, Vishal Redlan and Rohit Gavand attacked him with fist, blows and kicks.

5. It is the contention of the learned counsel for the Appellant that the Appellant was not named immediately when the incident was narrated and it was after four days in the supplementary statement that names of Rohit Singh, Amit Redlan, Vishal Redlan and Ritesh Gavand have been mentioned. The learned counsel for Respondent No.2 submitted that the statements on record show that Amit Redlan and Amid alias Hamid Shaikh are different and when section 148 and 54 of IPC are applied, the roles of the assailants cannot be separated in this manner. This contention was also advanced by the learned APP.

6. However, the learned counsel for the Appellant has placed on record, and which is an admitted position, that as regards Rohit Singh, Vishal Redlan and Ritesh Gavand, this Court has

granted bail.

7. In the case of Rohit Singh, bail has been granted by the Division Bench (Coram: B.P.Dharmadhikari, ACJ and N.R.Borkar, J.) by judgment dated 28 February 2020 in Criminal Appeal No.1094/2019 wherein the Division Bench has observed that the injured did not attribute any role to Rohit Singh in the statement dated 9 March 2019 and it after four days when the supplementary statement came to be recorded that his name was mentioned. Thereafter the cases of Vishal Redlan and Ritesh Gavand were considered in Criminal Appeal No.97/2021 and Criminal Appeal No.582/2021 by the Division Bench (Coram: S.S.Shinde and N.J.Jamadar, JJ.) and they were granted bail vide order dated 26 July 2021. While granting bail, the Division Bench observed thus:

“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 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. 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.”

8. Perusal of the orders granting bail to Accused Rohit Singh, Vishal Redlan and Ritesh Gavand show that their role in the facts and circumstances attributed in the FIR is identical. The Court has used discretion in the light of the fact that there was delay in naming these Accused, the appellants therein. Same reason would apply to the present Appellant as well. Therefore, to maintain judicial consistency and that we have not been shown as how the role of the present Appellant is different from those who have been granted bail in the aforesaid orders, the case of the present Appellant to grant bail on parity will have to be accepted and the Appellant will have to be granted bail on the same terms and conditions as has been granted vide order dated 26 July 2021.

9. Accordingly, the following order:

- (i) The appellant i.e. Amit Vijay Redlan be released on bail on furnishing a PR bond of Rs. 20,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Special Judge;
- (ii) The appellant shall furnish the address at which he would be available during the pendency of trial, along with contact numbers;
- (iii) The appellant 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 appellant 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 appellant 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) Fees of Mr.Prasad Kulkarni, Advocate who is appointed are quantified at Rs. 10,000/-.

10. Appeal stands disposed of accordingly.

11. Parties to act upon an authenticated copy of this order.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)