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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1333 OF 2019

Vikrant @ Chotya Shankar Babar	...Appellant
Versus	
The State of Maharashtra	...Respondent

Mr. Umesh R. Mankapure for the Appellant.

Ms. P.P.Shinde, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 3rd AUGUST, 2021

P.C. :

1. Heard learned Counsel for the parties.
2. By this appeal, the Appellant seeks his enlargement on bail in connection with C.R. No. 292 of 2017 registered with the Sangli police station, District Sangli, for the alleged offences punishable under Sections 307, 143, 147, 148 149, 504 506, 427 and 120(B) of the Indian Penal Code; under sections 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribes Act (Prevention of Atrocities) Act, 1989; under Sections 4, 25 and 27 of the Arms Act and under Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

3. Learned Counsel for the Appellant submits that the allegations as against the Appellant are false and baseless. He submits that admittedly the Appellant's name does not find place in the FIR lodged by Kiran Bhandare. He submits that even Section 307 will not apply having regard to the fact that the injuries sustained by the two injured i.e. Vicky Kamble and Kiran Bhandare were simple in nature. He further submitted that the Appellant was admittedly not present at the spot at the relevant time and that the name of the Appellant was added after more than 15 days of the incident. Learned Counsel submits that the statements of the two alleged eye-witnesses i.e. Kapil Shinde and Nihal Khalifa, vis-a-vis conspiracy were recorded belatedly, to show that the Appellant was heard telling the other co-accused at a paan shop, to eliminate the injured - Kiran Bhandare. He further submitted that all the accused in the said case except the Appellant have been released on bail. He submits that in the facts, the bar of Section 21 will not apply. He further submitted that as far as the Appellant's antecedents are concerned, the Appellant has been acquitted in almost all the cases.

4. Learned APP opposes the application. Learned APP has filed an affidavit of Krishnat Mahadev Pingale, Sub-Divisional Police Officer,

Islampur, Sangli to oppose the application. Learned Counsel for the Respondent/complainant also opposes the application.

5. Perused the papers. According to the complainant - Kiran Bhandare, the incident took place on 4th December, 2017. He has stated that they had gathered on 4th December, 2017 to celebrate the birthday of his brother at about 3:30 p.m. He has stated that his brother Rahul, Vicky Kamble, Raju Sonawane were standing near Pakija masjid when two motorcycles and one four wheeler came there. The complainant has alleged that Rohit Babar was armed with a Koyata; Rahul Babar with a stick; Shekhar with a Koyata; and Barkya with a stick. Dhana Bhosale and Omkar Jadhav are also stated to have come to the spot. According to the complainant, when the said persons came near the spot, he started running, pursuant to which, Rohit Babbar hurled castiest abuses at him and Vinu Nikam held his shirt and again abused him and also assaulted him with a Koyata, on his head. The complainant has further stated that he pushed the said accused and tried to escape and that in the process the koyata hit him on his right knee; that due to the assault on the knee, the complainant sat down, pursuant to which, Rohit Babar assaulted him with a Koyata on his head. It is further stated that one Raju Sonawane tried to rescue him, however, the accused also assaulted him and that, accused Omkar Jadhav

assaulted the complainant's uncle and brother with fist blows. It is further stated that whilst leaving the spot, the accused caused damage to the complainant's rickshaw. After the incident of assault, the complainant and his uncle – Vicky Kamble were admitted in the Civil Hospital, after which the FIR was lodged.

6. Admittedly, the Appellant has not been named in the FIR and as such no overt act has been attributed to him. It appears that subsequently, after two weeks of the incident i.e. on 21st December 2017, the police recorded the statement of two witnesses i.e. Kapil Sunil Shinde and Nihal Khalifa. The said witnesses, in their statement dated 21st December, 2017 stated that all the accused were standing at a paan shop, when they heard the Appellant telling Rahul Babar, Rohit Babar, Vinayak Nikam, and others that the complainant should be eliminated. Both the said witnesses have stated that after hearing the said conversation on 4th December, 2017 at 12.00 noon, they left the said spot. It appears that the said witnesses visited the hospital where the complainant was admitted i.e. the Civil Hospital on the very same day i.e. on 4th December 2017, soon after the incident of assault, however, did not make any disclosure of what they had heard, either to the complainant or any other person. Although, both the witnesses in their statement have stated that they did not make the

disclosure as they were scared and that, they made the said disclosure only after all the accused were arrested including the Appellant, prima facie, does not appear to be correct, inasmuch as, the Appellant was arrested on 26th December, 2017, after the statements of the said two witnesses i.e. Kapil Shinde and Nihal Khalifa were recorded.

7. A perusal of the injury certificate shows that both the injured have sustained simple injuries, though they were allegedly assaulted with sharp edged weapons and sticks by so many accused. As far as Kiran Bhandare is concerned, he has sustained two incised injuries, one on the left parietal occipital region and other on the left knee. Both the said injuries are stated to be simple injuries. As far as Vicky Kamble is concerned, he has sustained four incised injuries i.e. one on his chest and three on his back. All the said four injuries are stated to be simple in nature.

8. As far as the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, there is no allegation against the Appellant that he hurled any castiest abuses on the complainant or any other persons. As far as antecedents are concerned, in most of the cases the Appellant has been acquitted and some of the cases against him

are pending. The Appellant is in custody since 26th December, 2017. All other 8-9 co-accused are released on bail. Even the prospect of the trial commencing in the immediate near future appears to be bleak. Considering the alleged role of the Appellant and the belated statements recorded of the witnesses, after almost two weeks and having regard to the fact, that admittedly the Appellant was not present at the spot at the time of the assault, the bar of Section 21 would not apply. Accordingly, the appeal is allowed and the Appellant is enlarged on bail on the following terms and conditions;

ORDER

- (i) The Appellant be enlarged on bail in C.R.No.292 of 2017 registered with the Sangli Police Station, District Sangli, on executing P.R. Bond in the sum of Rs.50,000/- with one or two local solvent sureties in the like amount;
- (ii) The Appellant shall report to the Sangli Police Station the 2nd and 4th Saturday of every month from 10.00 a.m. to 12.00 noon, till the conclusion of the trial;
- (iii) The Appellant shall not enter the jurisdiction of Sangli Police Station for a period of three months from the date of his release, except for the purpose of attendance as directed vide clause (ii) above.

(iv) The Appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The Appellant to cooperate with the conduct of the trial;

(vi) The Appellant shall not tamper or attempt to influence the complainant, witnesses or any person concerned with the case;

(vii) The Appellant shall file an undertaking with regard to clauses (ii) to (vi) in the trial Court, within two weeks of his release.

9. The Appeal is accordingly allowed and disposed of on the aforesaid terms and conditions.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.