

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

CRIMINAL APPEAL NO. 21 OF 2021

(NIRAJ SHYAMLAL SAYYAM...VS.. STATE OF MAH.THR.PSO PS SALEKASA & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.D.Dharmadhikari, Advocate for Appellant.
Ms Mayuri Deshmukh, A.P.P. for Respondent No.1.

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.

DATED : JANUARY 13, 2021.

Heard.

2. Crime No.150 of 2018 is registered against two accused and one juvenile in conflict with law for the offences punishable under Sections 302, 120-B, 201, 404 and 34 of the Indian Penal Code and Sections 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The appellant is arrested on 4th July 2018 and is in jail since then. The appellant had filed application under Section 439 of the Code of Criminal Procedure, which came to be rejected by the Sessions Court on 25th July 2019. The appellant again moved an application under Section 439 of the Code of Criminal Procedure which is dismissed by the impugned order dated 16th October 2020.

4. The contention on behalf of the appellant is that the prosecution case is based on circumstantial evidence, mainly on the statements of two witnesses who allegedly had last seen the victim with the accused, however, the

statements of those two witnesses show that they had seen the victim with the accused on 1st July 2018, whereas the incident occurred in the night between 2nd and 3rd July 2018. It is further argued by the learned Advocate for the appellant that though the prosecution has come out with the case that the weapon is recovered from the appellant, Forensic Report shows that the finger prints on the weapon do not match with the finger prints of the appellant. Reliance is also placed on the fact that the co-accused is released on bail as per the judgment passed by this Court in Criminal Appeal No. 316 of 2019 on 16th April 2019. It is further argued that any other crime is not registered against the appellant and that investigation is complete and charge-sheet is filed and there is no reason to keep the appellant in jail.

5. With the assistance of the learned Advocate for the appellant and the learned A.P.P., we have examined the material placed on record. The statement of father of the victim shows that the victim had gone with the appellant on 1st July 2018 and had not returned. Though the submission made by the learned Advocate for the appellant that further custody of the appellant is not required by the Investigating Agency, *prima-facie* appears to be justified, looking to the facts of the case and after going through the impugned order passed by the Sessions Court, we are not inclined to interfere with the impugned order.

Hence, the appeal is **dismissed**. However, we direct the Sessions Court to conduct the trial expeditiously and conclude it till 15th June 2021.

While allowing Criminal Appeal No.316 of 2019 and directing that the co-accused Pramod Babulal Rahangdale be released on bail, this Court had directed that he shall attend all the dates of the trial, failing which the learned Sessions Judge shall consider the aspect of cancellation of bail. If the co-accused Pramod fails to attend on any date of the trial, without seeking exemption from the Sessions Court, the Sessions Court may pass appropriate orders considering the absence of the co-accused Pramod as breach of condition imposed by this Court while directing his release on bail.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J.)

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