

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO. 58 OF 2021

Sahil Sheikh,
Aged about 20 years,
Occ.- Labour (Tile fitting),
R/o. Gautam Nagar,
Yavatmal, Tq. and District Yavatmal.

....APPELLANT

---- VERSUS ----

1. State of Maharashtra
Through Police Station Officer,
Lohara, Yavatmal.

2. Akash Pundlik Wankhede,
Aged about 23 years,
Occ. - Labour,
R/o. Netaji Nagar, Yavatmal,
Tq. and District Yavatmal.

.... RESPONDENTS

Shri S.V. Sirpurkar, Advocate for the appellant.
Ms. Mayuri Deshmukh, A.P.P for the respondent No.1/State.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATE : 20.04.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.

2. This is an appeal under Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging the order dated 19.09.2020 passed by the learned

Additional Sessions Judge-2, Yavatmal in Special Atrocities Case No. 29/2020 in relation to the First Information Report No.241/2019 registered with the respondent No.1-Police Station for the offences punishable under Sections 143, 147, 148, 149, 307, 302, 120B of the Indian Penal Code, Sections 4, 25 of the Indian Arms Act and Section 135 of the Maharashtra Police Act read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Act of 1989”).

3. The First Information Report came to be registered against the appellant and others with the accusations that the complainant Akash Wankhede saw the accused persons assaulting Vinay Khushal Rathod with knife and sharp-edged weapons. It is alleged that the complainant tried to rescue Vinay Rathod but the accused persons caught hold of the complainant and also assaulted the complainant. At that time, one Amit Deshmukh and one Khushal came at spot with shouting, therefore, the accused persons ran away from the spot.

4. After registration of the First Information Report, the Investigating Agency recorded the statement of witnesses and arrested the appellant on 26.12.2019. The appellant therefore, filed third application under Section 439 of the Code of Criminal Procedure seeking regular bail, when earlier two applications

seeking regular bail were rejected by the trial Court. The learned Sessions Judge by impugned order rejected third bail application of the appellant. The appellant has therefore, filed present appeal.

5. This Court on 01.02.2021 issued notice to the respondents. The respondent No.1 has filed reply stating that the Investigating Agency had recorded statement of eye witness Hariram Kolhe, who has categorically stated about role of present appellant. The Investigating Agency has also collected the CDR. The Investigating Agency also seized the clothes of the present appellant. It is stated that during the investigation, it is revealed that the accused was given contract to kill the deceased and the appellant was the part of conspiracy hatched by the accused persons. It is also stated that the Trial Court had rejected regular bail application of the present appellant twice earlier.

6. Shri S. V. Sirpurkar, learned Advocate for the appellant invited our attention to the order passed by the Division Bench of this Court where one of us (Shri Z. A. Haq, J) was party. The said order showed that the appeal challenging rejection of regular bail application of appellant along with other accused persons was withdrawn on 23.06.2020. The charge-sheet in the present matter had been filed on 09.03.2020 i.e. before withdrawal of appeal

before this Court. Therefore, there is no substantial change in the circumstances after withdrawal of earlier appeal by the appellant.

7. The learned Advocate for the appellant invited our attention to the order passed by this Court in Criminal Appeal No.414/2020 filed by the co-accused Rahul Suresh Patil, who was granted bail by this Court. On scrutiny of the order in the Criminal Appeal No.414/2020 it appears that the appellant in the said appeal was not on the scene of crime and therefore, this Court granted him bail. Insofar as present appellant is concerned, the eye witness Hariram Kolhe has stated in his statement recorded under Section 161 of the Code of Criminal Procedure about role of present appellant. Therefore, the order passed by this Court in Criminal Appeal No.414/2020 will be of no help to the appellant.

8. The learned Advocate for the appellant further submitted that though in a statement under Section 161 of the Code of Criminal Procedure role of appellant is mentioned but in a statement under Section 164 of the Code of Criminal Procedure, no role has been attributed to the present appellant and therefore, the appellant is entitled to regular bail. In our opinion, the said submission has no substance as this Court by order dated 23.06.2020 dismissed appeal of the present appellant as withdrawn. Once the appeal of the present appellant is dismissed as withdrawn,

it is deemed that all the contentions raised by the appellant on merit are rejected. There is no substantial change in circumstances after the order was passed by the Coordinate Bench of this Court on 23.06.2020. The appellant cannot be granted to bail only because role of the appellant had not been stated in the statement under Section 164 of the Code of Criminal Procedure as such circumstance is of less importance at the stage of consideration of bail application.

9. The learned Sessions Judge in his order has given detailed reasons for rejecting bail application of the appellant. The learned Sessions Judge has rightly stated that earlier regular bail of the appellant was rejected on merit after filing of the charge-sheet and in absence of change in circumstance, it is not open for the appellant to file bail application again. The learned Sessions Judge has observed in his order that non-mentioning of the name of appellant in the statement under Section 164 of the Code of Criminal Procedure shows that the appellant has won-over the witnesses and said fact alone is sufficient to held that the present appellant is pressurizing prosecution witnesses and tampering the prosecution evidence.

10. The learned Sessions Judge has assigned cogent reasons for rejection of third bail application of the appellant. We

do not find any illegality in exercise of discretion by the learned Sessions Judge. There is no merit in the present appeal.

11. The appeal is therefore, dismissed.

JUDGE

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