IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.532 OF 2022

Sayyad Akheb Ahmad Akbar Ahmad ... Appellant

Versus

1. The State of Maharashtra
2. Aarti Madhukar Dhurandhare ... Respondents

....

Mr. Girish K. Thikgle Naik, Advocate for the Appellant
Mr. G.O. Wattamwar, APP for the Respondent No.1/State
Mr. Angad Kanade, Advocate for Respondent No.2

....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 17 AUGUST, 2022

PER COURT:-

. This appeal is directed against the impugned judgment and order of rejection of bail application moved by the present appellant in connection with Crime No.181 of 2022 for the offences punishable under Section 354, 354-D, 341, 337, 338, 323, 504, 506, 307 read with Section 34 of the Indian Penal Code, under Sections 4/25 of the Arms Act and under Sections 3(1)(r)(1), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered at Shivajinagar Police Station, Beed

2. Heard Mr. G.K. Thigle, learned counsel for the appellant, Mr. Angad Kanade, learned counsel for respondent No.2/first informant/victim and Mr. Wattamwar, learned APP for respondent No.1/State.

3. Mr. Thigle, learned counsel for the appellant submitted that this appellant has been falsely implicated in the case. The involvement of this appellant nowhere brought on record by way of investigation. He has been implicated in the crime solely on one statement of rickshaw driver. He submitted that identification parade conducted by the investigation officer is worthless exercise in view of delay. He submitted that co-accused has been released on bail who has played major role in commission of the alleged offence. He needs to be enlarged on bail by applying the rule of parity. He submitted that investigation of the case is completed. The charge-sheet has been filed. Having regard to the offence alleged against the appellant, there is no need to keep the appellant behind the bars.

4. Mr. Wattamwar, learned APP strongly opposed to allow this application and grant bail to the appellant. He submitted that the appellant has been identified in the test

identification parade conducted by the investigating officer. The eye witness to the incident has identified this appellant. The first information report and the statement of the first informant under Section 164 of the Code of Criminal Procedure clearly indicates the role played by this appellant. He submitted that having regard to the gravity of the offence alleged against the appellant, it is not a fit case to release him on bail.

5. Mr. Angad Kanade, learned counsel for respondent No.2/victim also strongly opposed to grant bail. He also invited my attention to the statement of the victim recorded under section 164 of the Code of Criminal Procedure as well as first information report. He submitted that the version given by the first informant is consistent, which throws light about the major role played by this appellant. He submitted that the appellant and his colleague have given dash to the Scooty driven by the victim at the time of the incident. It is a serious offence committed by the appellant and his accomplice. Section 307 coupled with other offences under the Indian Penal Code and under the provisions of Atrocities Act are attributed. He submitted that though the investigation is completed and chage-sheet is filed, it is not a

fit case to release the appellant on bail. He submitted that the learned trial Judge has not considered all these aspects while granting bail to the co-accused. He, therefore, urged to dismiss the appeal.

6. I have considered the submissions of the learned counsel for the appellant, learned APP for respondent No.1/State and the learned counsel for respondent No.2/victim. I have also gone through the bail order passed by the learned Additional Sessions Judge, Beed in criminal bail application No.565 of 2022, whereby the prayer for bail of the present appellant came to be rejected. On going through the same, more particularly para 8, it reveals that the learned Additional Sessions Judge was pleased to rejected the bail application mainly on the ground that investigation of the crime was in progress. Secondly, there was possibility of tampering of prosecution witnesses, and thirdly, test identification parade of the appellant was yet to be conducted. Now, the aforesaid points are not remained. The investigation is over and the charge-sheet is filed. Test identification parade of the appellant has been conducted and the report is on record. So far as the merits of the case is concerned, it would not be just and proper to discuss the

merits of the matter while deciding this application to the extent of bail.

7. The alleged incident had taken place in the wee hours of 16.05.2022. The name of the appellant came to be revealed during the course of investigation as appearing from the papers annexed with the charge-sheet. So far as the alleged recovery of beer bottle in this case is concerned, it appears from the house search and seizure panchanama dated 19.06.2022 that, the empty beer bottle came to be recovered from the house of the present appellant. Whereas, the list of seizure of property place on record by the appellant, it indicates that the said beer bottle has been produced by the father of the present appellant before the Sub Divisional Police Officer, Beed. This is the quality of the evidence regarding so called recovery of beer bottle.

8. It nowhere indicates that there are criminal antecedents against the present appellant. There are no extraordinary circumstances to keep the appellant behind the bars though Section 307 of the Indian Penal Code alleged against the appellant and his accomplice is serious coupled with the provisions of Atrocities Act. The apprehension of

prosecution agency can be taken care of by imposing certain conditions on the appellant. I do not see any reason to reject the bail application moved by the appellant. The reasons assigned by the learned Additional Sessions Judge, Beed while rejecting the application are now not remained. Under these circumstances, it would be just and proper to grant bail to the present appellant by setting aside the impugned order passed by the learned Additional Sessions Judge, Beed.

ORDER

(i) The appeal is hereby allowed.

(ii) The impugned order passed by the learned Additional Sessions Judge, Beed dated 07.07.2022 in Criminal Bail Application No.565 of 2022, is hereby quashed and set aside.

(iii) The appellant **Sayyad Akheb Ahmad Akbar Ahmad** shall be released on bail on his furnishing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties of the like amount on following conditions :-

(a) The appellant shall report his attendance once in a week at Shivajinagar Police Station, Beed i.e. on Wednesday between 11.00 am to 12.00 noon till framing of the charge by the concerned trial court.

(b) The appellant shall not enter into the area of the victim where she resides till decision of the case/Special Case.

(b) The appellant/accused shall not make any attempt to influence the first informant by any manner.

(c) If any attempt is made by the appellant/accused to that effect, his bail would be cancelled, obviously by following the due procedure of law.

(d) The appellant shall not tamper with the prosecution witnesses and evidence in any manner.

(e) The appellant shall furnish his in detail address with Cell Number with the trial court as well as the concerned investigating officer.

(f) He shall not make any attempt to prolong the trial.

(g) Bail before the trial court.

(iv) Inform the concerned court and police station accordingly.

(v) The Criminal appeal is accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane