

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 844 OF 2022

Waris Giasuddin Raja Shaikh

Appellant

Versus

The State of Maharashtra & another

Respondents

Mr. R. A. Tambe and Mr. A. U. Nikam, Advocates for the appellant.

Mr. S. P. Sonpawale, APP for the State.

Mr. S. S. Chapalgaonkar, Advocate for respondent No. 2.

CORAM : R. G. AVACHAT &

R. M. JOSHI, JJ.

DATE : 19th DECEMBER, 2022.

ORDER :

1. This appeal is filed by the appellant seeking regular bail in connection with Crime No. 237/2021 registered with Shirdi Police Station, Tq. Rahata, Dist. Ahmednagar for the offence punishable under Sections 302, 307, 120B, 201 read with Section 34 of the Indian Penal Code and Sections 3(2)(va), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. On 29th June, 2021, Sanjay Pawar gave information to the police that at about 6.30 pm he along with his cousin brother Rajendra (deceased) came on bicycle from Ahmednagar to Shirdi. At

About 7.30 pm, they were consuming liquor in the open space at the opposite side of hotel Nisarga. At that time, four unknown boys from the age group of 18 to 22 years came on two motorcycles and asked for match box. Informant told them about he not having match box however, Rajendra gave match box and kept it on the seat of the bicycle and asked them to take the same. Since the match box was not given immediately and it was not handed over to them, they gave angry stare to Rajendra. Thereafter they took the match box and went to the back side where informant and Rajendra were sitting. Thereafter suddenly, two boys came with sharp edged weapon and assaulted Rajendra on his head and abdomen. Informant ran away from the spot. Thereafter injured was taken to the hospital and while being treated, he died. Appellant came to be arrested in connection with this crime.

3. Learned advocate for the appellant submitted that except identification of the appellant during Test Identification Parade, which is in contravention of rules, there is absolutely no evidence on record to show his involvement in the crime. It is submitted that on the face of it, the identification parade cannot withstand scrutiny of the law for violation of the basic rules in that regard. It is submitted

that in absence of any evidence to connect appellant with the crime, he cannot be detained after completion of investigation and filing of the charge-sheet.

4. Learned APP opposed the said submissions by pointing that this is a case where pursuant to conspiracy, death of deceased is caused. It is submitted that present appellant has been identified as one of the persons who came to the spot on motorcycle and considering the case of the prosecution that these four persons at the behest of the co-accused pursuant to the conspiracy hatched by them, once identified cannot be released on bail. According to him, there is evidence to show that present appellant was instrumental in disposing of the clothes of the accused by burning them which indicates his positive involvement in the crime. It is also feared that on release, he would abscond and pressurise witnesses and also cause interference in evidence of prosecution. Learned advocate for respondent No. 1/victim, also opposed the appeal on above grounds.

5. Merely because the offence charged against the appellant is serious, he cannot be denied bail if there is no prima facie evidence to connect him with the crime in question. As far as present

appellant is concerned, there is no recovery much less incriminating recovery at his instance nor any witness has attributed any active role to him in the assault on the deceased. No doubt, there is statement of co-accused under Section 27 of the Evidence Act which suggests that the present appellant was along with him when the clothes were burnt but even if it is accepted to be evidence against the appellant, this at the most will bring his act under Section 201 of the Indian Penal Code and not beyond that.

6. Being conscious of the fact that we need to ascertain atleast prima facie involvement of the appellant in the crime, a specific question was posed to the learned APP as to whether there is allegation against the present appellant of he being actual assailant. On instructions from the Investigating Officer, it is informed that there is no allegation against the present appellant of causing actual assault on the deceased but it is claimed that he was part of conspiracy. In the light of this fact, when it is a case of prosecution that four persons came on two different motorcycles and amongst these four persons, two persons came and assaulted the deceased, it was necessary for the prosecution to show the exact role played by this appellant in the crime. Though there is material on record to

indicate that during the course of identification parade, the present appellant was identified by the witness, however, he does not describe the role played by the appellant in killing the deceased.

7. Considering the aforesaid circumstances, we find that prima facie there being no evidence to connect the appellant with the crime in question and in particular, for offence punishable under Section 302 of the Indian Penal Code. Since the charge-sheet is already filed, there is no justification to keep the appellant behind the bar. The apprehension of the prosecution about abscondance of the appellant and his availability during the trial as well as possibility of tampering with the evidence can be taken care of by imposing appropriate conditions. Hence the order :-

ORDER

- i) Criminal Appeal is allowed.
- ii) The impugned order passed by the learned Judge, Special Court, Kopargaon, dated 1st September, 2022, below application Exhibit 48 in Sessions Case No. 52/2021 is quashed and set aside.

iii) Appellant be released on bail in connection with Crime No. 237/2021 registered with Shirdi Police Station, Tq. Rahata, Dist. Ahmednagar, for the offence punishable under Sections 302, 307, 120B, 201 read with Section 34 of the Indian Penal Code and Sections 3(2)(va), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on his furnishing P.R. Bond in the sum of Rs. 15,000/- (Rs. Fifteen Thousand) with one solvent surety in the like amount.

iv) The appellant shall attend the concerned police station every fortnight on Sunday between 10.00 am to 12.00 noon, for 12 months, from the date of this order.

v) Bail before the trial Court.

(R. M. JOSHI)
Judge

(R. G. AVACHAT)
Judge

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