

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 283 OF 2022

Nihal Altaf Pathan ...Appellant

Versus

The State of Maharashtra & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 1706 OF 2022
IN
CRIMINAL APPEAL NO. 283 OF 2022**

Dipak Subhash Solvande ...Applicant

Versus

State of Maharashtra & Anr. ...Respondents

**WITH
CRIMINAL APPEAL NO. 444 OF 2020**

1. Vijay Biru Pujari
2. Soheli Rajubhai Mulani
3. Akib Liyakat Pathan
4. Akshay Sahebrao Dhumal
5. Sam @ Samir Nurmahammad Momin
6. Alfaj Kasim Shaikh
7. Aayub Abdulgaffar Byali

...Appellants

Versus

The State of Maharashtra & Ors. ...Respondents

**WITH
CRIMINAL APPEAL NO. 747 OF 2021**

Niraj Anandrao Panke ...Appellant

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr. Ashok Mundargi, Senior Advocate i/b. Mr. Abhishek Yende for the Appellant in Appeal No. 283 of 2022.

Mr. U.R. Mankapure for the Appellants in Appeal Nos. 444 of 2020 and 747 of 2021.

Mr. Yajuvendra S. Singh for the Applicant in IA No. 1706 of 2022 and for Respondent Nos. 3 and 4 in both Appeals.

Mr. A.R. Kapadnis, APP for the Respondent - State in all Appeals.

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**CORAM : REVATI MOHITE DERE &
V.G. BISHT, JJ.**

DATE : 13TH JUNE, 2022

P.C.:

1. Since all the aforesaid appeals arise out of a common incident in C.R. No. 580 of 2019, all the appeals are taken up for hearing together.

2. Rule. Rule is made returnable forthwith with the consent of the parties and all the appeals are taken up for final disposal.

3. By these appeals, the appellants in all the aforesaid appeals seek their enlargement on bail in connection with C.R. No. 580 of 2019, registered with the Karad City Police Station, for the alleged offences punishable under Sections 302, 143, 144, 147, 148, 149, 109, 120 (B) of the Indian Penal Code ('I.P.C. '); under Sections 3 (1) (r) (s), 3 (2) (v), 3 (2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC ST Act') and under Sections 3 and 25 of the Arms Act.

4. Mr. Mundargi, learned senior counsel for the appellant in Criminal Appeal No. 283 of 2022, submits that, admittedly, the appellant was not present at the spot. He submits that the appellant has neither been named in the FIR nor in the supplementary statement. He further submits that even the statement of witness i.e. Ganesh Mulya, the owner of Hotel Asara, where statement was recorded with respect to alleged conspiracy being hatched in Asara Hotel, does not reveal the presence of the present appellant. According to learned Senior Counsel, the appellant is falsely implicated in the present crime. He further submits that the appellant had lodged a complaint as against Pawan Solvande (deceased) on the previous date i.e., on 20th August, 2019, as Pawan had tried to extort money from the appellant. He further submits that not a single case is registered against the appellant except, the present case, whereas there are about 4 to 5 cases registered against the appellant's father- Altaf Pathan, who has been released on bail in the same C.R. He further submits that deceased- Pawan, was an extortionist and there were several cases pending against him and as such he had several enemies. He further submits that in the entire charge-sheet, there is no material evidence to show that the alleged conspiracy has been hatched by the appellant. According to the learned Senior Counsel, initially, a proposal was sent for invoking the provisions of the MCOCA Act, and that in the said proposal, co-accused-Junaid

Shaikh has been shown as a gang leader, however, the same was refused. He submits that the said fact assumes importance, as it was Junaid, who was alleged to be a gang leader and not the appellant. He further submits that CDR records relied upon by the prosecution also do not throw light on the alleged conspiracy.

5. Mr. Mankapure, learned Counsel for the appellants in Appeal Nos. 444 of 2020 and 747 of 2021, submits that none of the said appellants have either been named in the FIR nor in the supplementary statement. He further submits that there is no material to show the presence of the said appellants at the spot. He further submits that even Ganesh Mulya, the owner of the Hotel Asara, where the alleged conspiracy was hatched, does not reveal the presence of the present appellants nor was the said witness sent for identification of the accused. He further submits that although some of the witnesses have identified appellant Nos. 3, 4 and 5 i.e. Akib, Akshay and Sam @ Samir, however, no role has been attributed to the said appellants. He further submits that the CCTV footage also does not show the presence of the appellants at the spot of incident. He further submits that there is an alleged recovery of a Honda Activa from the appellant – Vijay Biru Pujari's brother and an Ertiga car from the appellant -Sam @ Samir Nurmahammad Momin's brother, however, there is no evidence to show from that the above said vehicles were used in the commission of the offence.

6. Learned APP opposes the appeals.

7. Learned Counsel for respondent No.2 also opposes the appeals. Learned Counsel for the Respondent No.2 submits that the appellant - Nihal Altaf Pathan had motive to cause the death of Pawan and that merely because he was not present at the spot at the time of incident, will not absolve the appellant of his crime.

8. Perused the papers, in particular, the statements of eye-witnesses, statement of Ganesh Mulya i.e. owner of the Hotel Asara, in respect of an alleged conspiracy hatched at the hotel, and, the statements of some of the witnesses, pursuant to which the provisions of the SC ST were invoked. It appears that an incident took place on 20th August, 2019, pursuant to which the appellant - Nihal Altaf Pathan lodged a complaint as against Pawan (deceased), alleging therein, that Pawan had tried to extort money from him. The incident in question, which is the subject matter of these Appeals, took place on 21st August, 2019 at about 12:30 midnight. It is alleged by the prosecution that about 10 -12 persons arrived in an Ertgia car and three, two wheelers. It is further alleged that the complainant identified a few assailants and saw Junaid Shaikh holding a pistol and Junaid and Shivraj firing at Pawan from a pistol and Haider stabbing

Pawan with a knife. The postmortem report is consistent with the injuries alleged by the witnesses.

9. Admittedly, none of the appellants have been named in the FIR nor in the supplementary statement nor by Ganesh Mulya i.e. the owner of the Hotel Asara, where the alleged conspiracy has been hatched. As per prosecution's case, 10 to 12 persons were present at the time of alleged incident, however, 21 persons have been arrested in connection with the said crime. No doubt, few are named and it appears from the statements that there were more than those named in the statements.

10. Although three of the appellants i.e. Akib, Akshay and Sam @ Samir were identified by some of the witnesses, no role has been attributed to any of the appellants. From the statements of witnesses it appears that, two accused are alleged to have fired at Pawan and one is alleged to have stabbed Pawan with a knife. The appellant Nos. 3, 4 and 5 i.e. Akib, Akshay and Sam are not amongst the said these persons. The vehicles that were seized at the instance of appellants -Vijay and Sam @ Samir's brothers does not prima-facie show that they were used. Learned APP has not pointed out from the statements of witnesses, that the vehicle numbers were disclosed by them. The evidentiary value of the said recoveries will be considered by the trial Court, at the stage of trial.

11. As far as CDRs are concerned, it appears that the appellant - Nihal Altaf Pathan had made one call on 20th August, 2019 at about 11.00 p.m. to Junaid Shaikh and around 237 calls were made by Junaid Shaikh to the appellant - Nihal Altaf Pathan from 1st January, 2019 to 20th August, 2019. Similarly, there are some calls made between other accused and Junaid Shaikh, in particular, by the appellant No.7-Aayub Byali on 20th August, 2019 i.e. two calls at 02.:13 p.m. and 10: 26 p.m. As far as other appellants are concerned, Junaid Shaikh has made a call to appellant No.3- Akib Pathan in June, 2019; appellant No.5-Sam @ Samir Momin has made 17 calls to Junaid Shaikh, the last call made on 18th August, 2019; and as appellant No. 6- Alfaj Shaikh last call was in May of 2019, to Junaid.

12. Thus, we prima facie, find that the CDR locations does not show the presence of the aforesaid appellants, at the spot, at the time of alleged incident. As far as the provisions of SC ST Act are concerned, the statements of the witnesses were recorded belatedly and that no role with respect to hurling castiest abuses has been attributed to any of the appellants.

13. Considering the aforesaid, we allow the aforesaid appeals and enlarge the appellants in all the said appeals on bail, on the following terms and conditions :

ORDER

(i) The appellants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each with one or two sureties in the like amount;

(ii) The appellants shall attend the concerned police station on the first Saturday of every month between 12.00 noon to 1.00 p.m. till disposal of the trial;

(iii) The appellants shall inform their latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

(iv) The appellants shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(v) The appellants shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court.

14. Rule is made absolute on the aforesaid terms. Appeals are disposed of accordingly.

15. It is made clear, that the observations made herein are *prima facie*, for the purpose of deciding this appeal and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

V.G.BISHT, J.

REVATI MOHITE DERE, J.