

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

CRIMINAL APPEAL NO. 160 OF 2021

Rohit @ Dadya Sudam Kadam ... Appellant
Versus
The State of Maharashtra and Anr. ... Respondents

Mr. Ranjeet Patil, for the Appellant.
Mrs. P.P. Shinde, APP for the Respondent No.1 – State.
Mr. Sariputta Sarnath, for Respondent No.2-Original Complainant.

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

DATE : 24th JUNE 2022

P. C. :

- 1 Heard learned counsel for the parties.

- 2 By this Appeal, preferred under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant seeks his enlargement on bail in connection with C.R. No. 225 of 2019 registered with the M.I.D.C. Kupwad Police Station, District-Sangli for the alleged offences punishable under Sections 302, 301 of the Indian Penal Code and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3 Perused the papers. The prosecution case rests entirely on circumstantial evidence. It appears from the statement of the complainant i.e. Laxman Devappa Kavthekar (grandfather of the deceased-Shreyas) that on 04/11/2019 at about 4:15 p.m., he saw his grandson Shreyas(deceased) with the appellant going on a motorcycle. It appears that thereafter, Shreyas did not return home. According to the complainant, he went to his daughter-in-law's house and enquired, whether Shreyas had come, however, as he had not returned, he started making calls to the relatives and to Shreyas's friends, so as to find out his whereabouts. Ultimately, on 08/11/2019 the complainant's daughter-in-law i.e. mother of the shreyas (deceased) lodged an N.C. complaint with the M.I.D.C. Kupwad police Station.

4 The complainant has alleged in his complaint/FIR, that on 10/11/2019, he and his family members visited Shreya's close friends including a girl, as well as appellant's house to find out, the whereabouts of Shreyas. It further alleged that the appellant's parents informed them, that he (appellant) had gone to MIDC Kupwad for duty. According to the complainant, on 13/11/2019

the police informed the family, that one dead body was found floating on the pond. The said dead body was identified as that of Shreyas. Pursuant thereto, Laxman Kavthekar (grandfather) lodged the complaint/FIR as against the appellant on 13/11/2019.

5 Learned Counsel for the appellant submits that the said evidence of last seen cannot be believed as Shreyas's mother had not disclosed in the missing complaint dated 08/11/2019, that the deceased was last seen with the appellant. He further submits that even in the complaint, the complainant has not stated that he had disclosed to his daughter-in-law that the deceased was last seen by him with the appellant. Learned Counsel submits that if the same was true, the complainant would not have visited the appellant's house on 10/11/2019 i.e. after about 2 days after deceased went missing. He submits that thus, the circumstance of the appellant being last seen in the company of the Shreyas (deceased) cannot be believed. Prima facie, it is doubtful, whether the deceased was last seen in the company of the applicant, having regard to the FIR, and the missing complaint. Another circumstance relied upon by the prosecution is, finding of the dead body of the deceased at the

instance of the appellant. A perusal of the Postmortem report shows that the body was highly decomposed and as such, the cause of death has not been opined. Even in the viscera nothing was found. The viscera also does not reveal any poison.

6 Considering the evidence on record *qua* the appellant, the appeal is allowed and the appellant is enlarged on bail, on the following terms and conditions :

ORDER

i) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two local sureties in the like amount;

(ii) The appellant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m, till conclusion of trial;

(iii) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the

matter and to the Investigating Officer of the concerned Police Station;

(iv) The appellant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

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

(vi) The appellant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the appellant's bail.

7 The appeal is accordingly allowed and disposed of in the aforesaid terms.

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

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

V. G. BISHT, J.

REVATI MOHITE DERE, J.