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

CRIMINAL APPEAL NO. 968 OF 2021

1. Aakash @ Gotu Namdeo Barkade	Appellants
2. Ramesh @ Gotu Sangam Sarvade	.. (Org. Accused Nos. 5 & 6)
Vs.	
The State of Maharashtra & Anr.	.. Respondents

Mr. Ashok Mundargi, Senior Advocate i/by Mr. Jayant Bardeskar for Appellants
Mrs. A.S. Pai, PP a/w Mr. H.J. Dedhia, APP for State
Mr. B.D. Joshi for Respondent No. 2

**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

DATE : 20th SEPTEMBER 2022.

P.C. [PER MILIND N. JADHAV, J.]:

1. The present Appeal has been filed by the Appellants under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, “**SC & ST Act**”) for seeking enlargement on bail in connection with C.R. No. 640 of 2021 registered with Mohol Police Station, District Solapur for offence punishable under Sections 302, 201 and 120B r/w 34 of the Indian Penal Code (for short “**IPC**”) and Section 3(2)(v-a) of SC & ST Act.

2. Appellants are accused Nos. 5 and 6 as per charge sheet in the aforesaid crime. First informant Shri. Dadarao Khirsagar is brother of deceased Satish who died on the spot in an accident. Vijay Sarvade, the other victim expired three days after being admitted to hospital.

2.1. It is the prosecution case that, Satish was instrumental in filing complaints seeking enquiry into preparation of voters' list of Ward Nos. 8 and 9, Mohol against accused No. 2 i.e. Rohit @ Anna Anil Fadtare and his group on the ground of manipulation and inserting names of bogus voters therein. It is further alleged that both deceased, Satish and Vijay were eligible for allotment of houses under the Ramai Gharkul Yojana floated by Government, however, at the behest of accused No. 2 and his group, they were denied that benefit. That, accused Nos. 2 and 3 also had a grudge against deceased and in an unrelated incident on 31.12.2019, they had threatened them by firing one round from their countrymade revolver into the ground and had warned them not to oppose their activities. It is alleged that on 28.06.2021, deceased along with several other persons had led an agitation against accused No. 2 and his group for causing misplacement of files and issues relating to allotment of houses under the Ramai Gharkul Yojana in Mohol region and therefore on 29.06.2021, accused Nos. 2 and 3 warned the deceased not to hold the agitation against them.

2.2. The incident in question occurred on 14.07.2021 at about 10:50 p.m. First informant received a phone call from one Rohit Bansode informing him that, his brother Satish had met with an accident and lying critically injured. First informant rushed to the

Government Hospital where he found Vijay Sarvade who was seriously injured and admitted to the hospital. At that time, first informant learnt that his brother Satish was lying dead at the accident spot. He rushed to the accident spot and found Satish lying dead in a pool of blood. F.I.R. bearing C.R. No. 640 of 2021 was registered with Mohol Police Station, District Solapur Rural on 15.07.2021 initially for offence punishable under Sections 302, 307 and 34 of I.P.C. against accused Nos. 1 to 4. On 19.07.2021 i.e. three days after the incident, Vijay Sarvade succumbed to his injuries in the hospital. Appellants were arrested on suspicion on 03.08.2021.

2.3. On 11.08.2021, chargesheet was filed before the trial Court and case was numbered as Special Sessions Case No. 259 of 2021. On 28.09.2021, Appellants filed application for seeking enlargement on bail below Exhibit 5 in trial Court. On 29.10.2021, trial Court dismissed the Application. The present Appeal has been filed against the said impugned order dated 29.10.2021 rejecting bail of Appellants.

2.4. In the interregnum, on 25.11.2021, supplementary chargesheet was filed before trial Court. Statement of two witnesses namely Bhalchandra Kamble and Shekhar Bansode were recorded on 15.11.2021, referred to and relied upon by the prosecution to evince the role of conspiracy of Appellants in supplementary chargesheet.

3. We have heard Mr. Ashok Mundargi, learned Senior Counsel appearing for Appellants, Mrs. A.S. Pai, learned PP along with Mr. H.J. Dedhia, APP for State and Mr. B.D. Joshi, learned Advocate for Respondent No. 2 and with their able assistance perused the record produced before us.

4. Prosecution's case for indictment of Appellants is based upon their role in hatching a conspiracy to murder the deceased and it is also alleged that they were instrumental in receiving the movement of deceased and were in active communication with the principal accused namely accused Nos. 1 to 4. It is required to be noted that as per prosecution accused No. 5 i.e. Appellant No. 1 is the personal assistant of the father of accused No. 2.

5. Prosecution's suspicion against Appellants emanates from the recorded statements of alleged eye witnesses to the incident. Accused No. 1 is the driver of a tempo which dashed against the motorcycle driven by deceased resulting into the death of Satish on the spot and Vijay in the hospital. According to prosecution because of political enmity between the group led by accused No. 2 belonging to one political party being opposed to by another group led by deceased Satish belonging to another political party, there was severe animosity between them.

5.1. It is alleged that resultantly, accused Nos. 2 to 4 along with

accused No.1, driver of the tempo and Appellants (accused Nos. 5 and 6) hatched a conspiracy to kill Satish (deceased). On the day of the incident, Appellants had dinner with accused Nos. 2 and 3 in Hotel Diamond Red, Mohol. It is argued on behalf of Appellants that merely based on this circumstance, they have been arrested on the ground of suspicion and having conspired with accused Nos. 1 to 4 in committing the alleged offence.

6. Statement dated 20.07.2021 of one witness by the name Sagar Lengare has been recorded. It is stated by this witness that, accused No. 1 paid Rs. 1,000/- to him for providing and supplying beer to both deceased. It is further stated that both deceased collected six cans of Tuborg beer from him (for which money was paid by accused No. 1) and reached Hotel Kaveri. There both deceased consumed beer along with accused No. 1. Prosecution has relied upon statement of one Wasim Talafdar, owner of Hotel Kaveri and one Arjun Kale, waiter in Hotel Kaveri who have stated that on the day of incident, accused No. 1 and both deceased had consumed alcohol in their hotel. It is further alleged that, accused No. 1 was known to both deceased as they had mediated for purchase of a second hand tempo for accused No. 1 at an earlier point of time.

7. Further indictment of Appellants is based upon the statement of several eye witnesses / persons recorded by Investigating

Officer (I.O.) for alleging complicity and participation of Appellants in the crime, statement of persons who have last seen some of the accused together with deceased, statement of persons who have stated about conspiracy hatched to murder the deceased and most importantly, two statements, both recorded on 15.11.2021 of Bhalchandra Kamble and Shekhar Bansode which form basis of the supplementary chargesheet alleging role to the Appellants.

8. In so far as the statement of eye witness accounts are concerned, we have perused statement of Mr. Ashok Gaikwad (a Page No. 114 of Appeal Memo), Mr. Rohan Bansode (Page No. 116), Mr. Sushant Bansode (Page No. 120), Mrs. Varsha Kshirsagar (Page 122), Mr. Dwarka Kamble (Page 124) and Mr. Vishveshwar Vitekari (Page 126). All these statements are recorded in July 2021 after the incident. Perusal of these statements *prima facie* reveal that they are all identical and speak the same language. It is stated in these statements that, along with accused Nos. 1 to 4, deponent of the statement also realized and came to know that Appellants were also involved in the present crime. *Prima facie*, a bare reading of these statements clearly shows that none of these deponents are eye witnesses to the incident and have given their statements on the basis of “hearsay evidence”. It is to be noted that in these statements, no specific role has been attributed to Appellants by any of these persons.

9. The next batch of statements relied upon by prosecution are by persons who have allegedly seen some of the accused together with the deceased on the day of the incident. These statements are at page Nos. 128 to 135 of the Appeal Memo. Reading of these statements reveals that these witnesses had seen deceased along with accused Nos 1 to 4 between 9:00 and 9:30 p.m. Some of the deponents have stated that they came to know about the accident at 11:00 p.m. Perusal of these statements *prima facie* also reveal that there was political rivalry and enmity harboured by accused No. 2 with the deceased. Reading of these statements once again show that these statements have been given on the basis of “hearsay evidence”.

10. Prosecution has further relied on the statements which are at page Nos. 137 to 151 of the Appeal Memo by certain persons to bring home the conspiracy angle. Once again a minute perusal of these statements reveals that apart from the political rivalry and enmity known and narrated by these persons, the inclusion of the name of the Appellants in the said statements is *prima facie* on the basis of “hearsay evidence”.

11. Now we come to the most important and crucial statements recorded by prosecution before filing the supplementary chargesheet indicting the Appellants. Statement of Bhalchandra Kamble recorded on 15.11.2021 states and attributes presence of Appellant No. 1 along

with other accused and they all having a discussion to finish their rivals i.e. the deceased due to the political rivalry and enmity. The statement further elaborates that the deponent heard about conspiracy to kill the deceased due to their political intervention in the politics of Mohol region. Perusal of this statement reveals that the deponent Bhalchandra Kamble had heard about this conspiracy on 14.07.2021 at 12:30 p.m. This date and the date of recording the statement are crucial. It is pertinent to note that Bhalchandra Kamble is a resident of Siddhart Nagar, Mohol, District Solapur and is a local agriculturist. It is further pertinent to note that Bhalchandra Kamble has not mentioned about presence of Appellant No. 2. Similarly the statement of Satish Bansode, a rickshaw driver and resident of Siddharth Nagar, Mohol was recorded on 15.11.2021. In his statement, Mr. Bansode has stated that on 30.06.2021, he witnessed accused Nos. 2 and 3 having a conversation near the water pipeline in Mohol and discussing that in the forthcoming civic elections, the deceased would be a formidable force to reckon with and hence they were required to be finished of. He has stated that he heard them discussing that accused No.1 (driver / owner of the tempo) was asked to kill Satish and Vijay by running his tempo over them and for that purpose, the finance for buying the second hand tempo was provided to accused No. 1.

12. *Prima facie* it appears that, both these statements are recorded on 15.11.2021 though both the witnesses are residents of Siddhart Nagar, Mohol. Nothing prevented them to record their statements with the police at an earlier point of time when several statements of residents of Siddharth Nagar were recorded. The statements of the alleged eye witnesses at page 114, 116, 120, 122, 124 and 126 of the memorandum of Appeal show that all these eye witnesses are also residents of Siddharth Nagar, Mohol.

13. It is vehemently argued on behalf of the prosecution that immediately prior to and after the incident, Appellant No. 1 had made a phone call to accused No. 1 at 20:18:30 hours and 21:18:39 hours and these conversations have lasted 175 and 107 seconds. It is sought to be argued that Appellant No. 1 (accused No. 5) was in active connivance with accused No. 1 at the time of the incident. Reliance is also placed by prosecution on the statement of one Amol Dagdu Waghmode recorded on 4.8.2021 wherein he has stated that the transaction of purchase of the second hand tempo had taken place on 01.07.2021 in the presence of the original owner of the tempo i.e. Arif Ayub Shaikh, his brother Asif and accused Nos. 1 and 2 in Janseva Hotel, Mohol and he had handed over the tempo to accused No. 1 and from that date it was been driver by accused No. 1. In his statement, he has further stated that there was political rivalry between the group

led by accused No. 2 and the deceased and along with accused Nos. 1 to 4, Appellants were also involved in the crime.

14. It is thus clearly seen that, the statement of alleged eye witness account merely indict the names of both Appellants being part of the crime on the basis of hearsay evidence. That apart, the other statements of witnesses recorded to link the last seen together theory and conspiracy theory also merely name both Appellants having participated in the crime, on the basis of hearsay evidence. The two statements of Bhalchandra Kamble and Shekhar Bansode recorded on 15.11.2021 and as alluded to herein above, *prima facie* clearly appear to be an after thought. Admittedly, it is seen that Appellants were seen having dinner and in the company of accused Nos. 2 and 3 on 14.07.2021; hence on that basis alone, *prima facie* it cannot be presumed that Appellants have a direct nexus to the crime. Reliance of prosecution on the call record of Appellant No. 1 with accused No. 2 immediately prior to and after the incident is also *prima facie* a weak piece of evidence at this stage without any further corroboration. Admittedly, call detail record (CDR) which is annexed to the affidavit-in-reply filed by the State is not part of the chargesheet. It is seen that admittedly each and every person's statement recorded by prosecution and relied upon for indicting Appellants talks about a serious political rivalry between the accused Nos. 2 to 4 (their political

party) vis-a-vis the political party of deceased Satish and Vijay. It is also seen and noted that it is the accused Nos. 2 to 4 who had threatened deceased Satish prior to the incident.

15. In view of the above discussion and findings, we find infirmity with the impugned Order dated 29.10.2021 passed below Exhibit 5 which records that the statement of witnesses and other evidence collected by the Investigating Officer *prima facie* lead to the involvement of Appellants and that Appellants were frequently in contact with each other and there was nexus between the incident and Appellants. We do not agree with the said reasoning given by the learned trial Court in para 9 of the impugned order.

16. In view thereof, we are of the opinion that the Appellants can be released on bail during the pendency of trial.

17. Hence, the following order:-

- (i) Appellants be released on bail in C.R. No. 640 of 2021 registered with Mohol Police Station, District Solapur on their furnishing P.R. bond of Rs. 50,000/- each with one or more solvent local sureties in the like amount;
- (ii) After their release from jail and during pendency of trial, the Appellants shall attend Mohol Police

Station, Solapur on every first Monday of the month between 10:00 a.m. to 02:00 p.m. initially for a period of one year and thereafter on every first Monday of every third calendar month i.e. four times in a year during pendency of the trial;

- (iii) Appellants shall attend all the dates before the trial Court unless precluded on medical grounds;
- (iv) Appellants shall not tamper with the evidence and / or pressurize the prosecution witnesses;
- (v) Appellants shall keep the I.O. informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (v) In case of any two consecutive defaults in compliance with the conditions as stated above, Respondents will be at liberty to file application seeking cancellation of bail of Appellants.

18. In view of the above, impugned order dated 29.10.2021 passed below Exhibit 5 in Special Case No. 259 of 2021 is hereby set aside and the Appeal is allowed in the aforesaid terms.

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RAVINDRA
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AMBERKAR
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[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]