

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

CRIMINAL APPEAL NO. 290 OF 2022

Aakash Vitthal Daundkar

... Appellant

Versus

The State of Maharashtra and Anr.

... Respondents

...

Mrs. Anjali Patil, for the appellant.

Mrs. P.P. Shinde, A.P.P for the Respondent-State.

Mr. Ratnesh Dube, Advocate (Appointed) for respondent No.2

Mr. Anil A. Devde, Police Inspector, Crime, Chakan Police Station
present

...

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : AUGUST 01, 2022

P.C. :

1. Heard learned counsel for the parties.
2. By this appeal, the appellant seeks his enlargement on bail in connection with C.R. No.1127 of 2019, registered with Chakan Police Station, Pune for the alleged offences punishable under Sections 302, 143, 147, 148, 149, 504, 506 and 201 of the Indian Penal Code and

under Section 3 (2) (va) of the Scheduled Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.

3. Perused the papers with the assistance of the learned counsel for the respective parties. The complainant – Baburao Namdeo Shelar, is the father of the deceased - Aakash Shelar. He has stated that the incident took place on 04.08.2019. According to the complainant- Baburao Shelar, when he was at his residence at about 9:30 p.m., co-accused came on motorcycles alongwith his son-Aakash; that the said persons picked-up Aakash and brought him into the house, and disclosed that as Aakash was troubling the girls of the school, they had assaulted him. One of the co-accused is alleged to have told the complainant to send Aakash outside the village on the next day, failing which they would kill him. Aakash is stated to have had sustained black and blue injuries on his person. According to the complainant when he asked Aakash, what had happened, Aakash disclosed that he was assaulted by the accused as they were suspecting him of harassing the girls from the school. Aakash is stated to have disclosed the names of some of the accused, including that of the appellant. Aakash is further alleged to have disclosed that the said accused had assaulted him with

wooden sticks and had threatened him, and after the assault, had taken to him to Dr.Walunj and thereafter, dropped him home. The complainant has further stated that Aakash slept at about 10.00 p.m. after dinner. It appears from the complaint that Aakash was taken to the hospital on the next day on 05.08.2019 and that he succumbed to his injuries on 11.08.2019. Thereafter, the complainant lodged the First Information Report (FIR) with the Chakan Police Station on 17.08.2019, after more than 12 days of the incident.

4. Learned counsel for the appellants submits that even if the prosecution case is taken as it stands, no offence as alleged under section 302 of the IPC is made out as against the appellant. She submits that it is the accused who had taken Aakash to the hospital and thereafter, had taken him home. She further submits that although, there are some eye witnesses, however, none of them have named the appellant, as being present on the spot nor any test identification parade held, as a result of which, the appellant has not been identified.

5. *Prima facie*, there appears to be some substance in the submission advanced by the learned counsel for the appellant. *Prima facie*, the conduct of the appellant in bringing Aakash home after taking

treatment from the doctor, shows that it was not the intention of the appellant to cause the death of Aakash. Whether or not the intention of the accused was to kill Aakash or to assault him only to teach him a lesson is a matter, which would be decided at the time of trial.

6. Considering what is stated aforesaid, the appeal is allowed and the appellant is enlarged on bail on the following terms and conditions. Accordingly, we pass the following order :

ORDER

- (i) The Appeal is allowed.
- (ii) The impugned order dated 17.02.2020 passed below Exh.10 in Special Atrocity Case No.09 of 2019, by the Additional Sessions Judge, Khed-Rajgurunagar, District Pune is hereby quashed and set aside.
- (iii) The appellant is directed to be released on bail, on executing PR Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount;
- (iv) The appellant shall attend the concerned Police Station on first Saturday of every month between

10:00 a.m. to 12:00 p.m. till his appeal is finally disposed of;

- (v) 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;
 - (vi) The appellant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;
 - (vii) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
 - (viii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.
7. The Appeal is disposed of in the aforesaid terms.
8. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.