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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 482 OF 2022**

Uday @ Vinay Balkrishna Malwankar .. Appellant
 Versus
 State of Maharashtra and Ors. .. Respondents

WITH
CRIMINAL APPEAL NO. 634 OF 2022

Saddam Nizam Hadimani .. Appellant
 Versus
 State of Maharashtra and Ors. .. Respondents

CRIMINAL APPEAL NO. 941 OF 2021

Gurfan Raffatullha Khan .. Appellant
 Versus
 State of Maharashtra and Ors. .. Respondents

Mr. B.G.Tangsali i/by Ajay Tripathi and Ms. Pooja Dubey for Appellants.

Mr. S. S. Hulke, APP for State.

Mr. Gaurav Parkar for Respondent Nos. 2 and 3.

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

DATE : 3rd October, 2022.

P.C.:

. All these Appeals are decided by this common Order as they arise from same offence.

2. Appellants are seeking their release on bail in connection with C. R. No. 87 of 2021 registered with Kopar Khairne Police Station on 02.04.2021, under Sections 307, 326, 394, 395, 143, 147, 148, 149 read with 34 and 120B of the Indian Penal Code (“IPC”) and under

Sections 3(i)(r)(s) and 3(ii)(v)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. For the sake of convenience, all the Appellants are referred to by their names wherever necessary.

3. Heard Mr. Tangsali, learned Advocate for Appellants, Mr. Parkar, learned Advocate for Respondent Nos.2 and 3 i.e. informant and victim and Mr.Hulke, APP for Respondent -State. Perused entire chargesheet.

4. The prosecution case in nutshell is that, there was a dispute between Rupesh Mhadse and principal accused Shyam Sonawane. Shyam Sonawane had given threats of dire consequences to Rupesh Mhadse. Rupesh Mhadse is the brother-in-law of victim Amol S. Kamble (Res.No.3). That, on 31.03.2021 at about 10.45 p.m. when the victim was taking a stroll after dinner, 6-7 persons all of a sudden accosted him and out of them, one person namely Shyam Sonawane confronted the victim and threatened him with dire consequences, if his brother-in-law i.e. Rupesh Mhadse did not mend his way in the business. One person wearing blue and yellow colour T-shirt abused the victim on his caste. Principal accused - Shyam Sonawane assaulted victim with a sharp edged chopper which hit his arm on the back side. Victim started bleeding from the said injury. At that time another person caught the victim from the back side. However, he rescued himself and started running away. That, while victim was running

away from the said spot, one person wearing white and black T-shirt assaulted him on his back with sharp edged weapon. Victim again rescued himself from the clutches of the assailants and started running. At that time a person who was riding Activa Scooter assaulted on the back of the victim with a sharp edged weapon. The person wearing white shirt got down from Activa Scooter and started chasing the victim. While running, victim had a fall. The person wearing white colour shirt assaulted the victim on his back with a chopper. Victim lost his balance and fell down. By the time victim got up, the person wearing white shirt again chased him with a chopper in his direction and assaulted him with the chopper repeatedly. Victim dodged the same and when he tried to avoid one blow, he suffered an injury near his wrist on his left hand. The person wearing white colour shirt again abused victim on his caste. After getting information about the assault, brother of victim Tinu Kamble came at the scene of offence and firstly took him to the Lions Hospital at Kopar Khairane, Navi Mumbai and subsequently to Breach Candy Hospital, Mumbai for treatment. Victim Amol Kamble (Respondent No. 3) was discharged from hospital on 04.04.2021.

Tinu Kamble lodged First Information Report (FIR) on 01.04.2021. After discharge from Breach Candy Hospital, statement of victim Amol Kamble came to be recorded on 04.04.2021.

5. We have minutely perused the statement of victim Amol

Kamble recorded under Section 161 of Cr.PC. There are numerous contradictions and improvements in it. While identifying the Appellants in the test identification parade, no specific role and/or other description has been given by him to allege that, a particular Appellant inflicted a particular blow on the particular part of his body. We therefore asked learned Advocate for the victim to explain to us, as to who has caused which injury as per the statement of victim Amol Kamble. It is an admitted fact that, the victim could not explain as to who assaulted him and on which part of his body. The description of the assailants given by the Respondent No.3 that, an accused was wearing white colour shirt does not match with the contents of test identification parade conducted by Special Executive Magistrate.

6. Apart from the above, it is important to note here that, the Breach Candy Hospital has issued Medico Legal Certificate to Mr. Yogesh, Assistant Police Inspector, Kopar Khairane, Navi Mumbai wherein following injuries have been observed on the victim:-

“Final Diagnosis-

Left wrist post knife injury complete laceration of the FDP and FDS of all fingers, partial laceration of the FPL, partial laceration of the median nerve, complete laceration of the ulnar nerve and artery.

Right thumb CLW.

Surgery-

Left wrist repair of partial laceration of FPL, cut tendons of FDS and FDP, partial laceration of medial nerve, ulnar nerve laceration and ulnar artery laceration.

Right thumb CLW suturing done on 01.04.2021 under block.”

7. A minute perusal of the said Medico Legal Certificate would clearly indicate that, it is silent about the fact that, the victim received several/multiple wounds with sharp edged weapon on his back. It is also silent about the injury allegedly suffered by the victim on his left arm. It appears to us that, with a view to implicate all accused persons in a crime of serious nature, rather a grave offence and to attract Sections 307 and/or 326 of IPC, the victim Amol Kamble has given statement to the Police, after he was discharged from the hospital and as and by way of improvements to paint a dark picture. As noted earlier, a bare perusal of Medico Legal Certificate issued by Breach Candy Hospital prima facie indicates that, application of Section 307 of IPC to the present crime is misplaced. We also have serious doubt about the applicability of Section 326 of IPC to the present crime.

8. Record further indicates that, other two accused persons namely Salman Shaikh and Prithvi Soda have been released on bail by this Court by an Order dated 31.03.2022.

Mr. Tangsali, learned Advocate for the Appellants submitted that, the role played by the Appellant is same and similar to that of Salman and Prithvi and therefore Appellants are also otherwise entitled to be released on bail on the ground of parity.

9. It is to be noted here that, in Order dated 31.03.2022, this

Court has observed that, the victim has not suffered any life threatening injuries, he has suffered major injury on his left arm and the present offence has not escalated further.

10. As noted earlier, in our considered view, the injured victim with a view to implicate all the concerned in a grave offence has painted a highly exaggerated version, full of contradictions and improvements.

11. The Order dated 31.03.2022 clearly records that, Shyam Sonawane is the prime accused. Uday @ Vinay Malwankar, Appellant in Criminal Appeal No. 482 of 2022 was arrested on 06.04.2021, Gurfan R. Khan, Appellant in Criminal Appeal No. 941 of 2021 was arrested on 03.04.2021 and Saddam N. Hadimani, Appellant in Criminal Appeal No. 634 of 2022 was arrested on 02.04.2021. The weapons used in the present crime have been recovered from Appellants Gurfan R. Khan and Uday B. Malwankar. As far as weapons recovered from Gurfan, Uday @ Vinay Malwankar and Saddam N. Hadimani are concerned, as per the submission of the learned Advocate for Appellants, no blood stains were found on the said weapons. The investigation of present crime is completed. No purpose will be served by further detaining the Appellants in jail as and by way of pre-trial incarceration.

12. Considering the aforestated deliberation, we are of the view that, Appellants can be released on bail during the pendency of trial.

13. Hence, the following Order :-

- (i) Appellants Uday @ Vinay Balkrishna Malwankar, Saddam Nizam Hadimani and Gurfan Raffatullha Khan be released on bail in Sessions Case No. 259 of 2021, arising out of C.R.No.87 of 2021 registered with Kopar Khairane Police Station, Navi Mumbai, on their furnishing P.R.bond of Rs.30,000/- each with one or two separate local sureties in the like amount.
- (ii) After their release from jail, Appellants shall report to Kopar Khairane Police Station, Navi Mumbai on every first Monday of the month between 10:00 a.m. to 12:00 noon initially for the period of one year and thereafter on every first Monday of every third calendar month i.e. four times in a year during the pendency of trial;
- (iii) Appellants shall also attend all dates before the trial Court unless precluded on medical grounds.
- (iv) Appellants shall give intimation in writing to the concerned Police Station in case of change of their current addresses and shall also provide their mobile numbers, if any, to the concerned Police Station from time to time;

(iv) In case of any two consecutive defaults in marking their presence as per the direction in clause No.(ii) and/or (iii), in that event, the State will be at liberty to file an Application for cancellation of bail of Appellants.

14. Appeals are allowed in the aforesaid terms.

[MILIND N. JADHAV, J.]

[A. S. GADKARI, J.]

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