

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.668 OF 2022**

Babudin Kasam Shaikh And Anr.

... Appellants

V/s.

The State Of Maharashtra And Anr.

... Respondents

Mr. Pratik R. Kalantri for Appellants.

Mr. Ajay Patil APP, for Respondent no.1-State.

Ms. Devyani Kulkarni Appointed Advocate for Respondent No.2.

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

DATE : 6th SEPTEMBER, 2022.

PC. :

This is an Appeal under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short “the S.C.S.T. Act”), impugning Order dated 8th June, 2022, passed below Exh-3 in Special Case No.28 of 2022, rejecting the Application preferred by Appellants under Section 439 of the Code of Criminal Procedure (for short “the CrPC”) for bail. The said Special Case No.28 of 2022 arises out of C.R. No.6 of 2022 registered with Ozar Police Station, District Nashik dated 20th January, 2022 under Section 302 read with Section 34 of the Indian Penal Code (for short “the IPC”) and under Section 3(2)(v) of the S.C.S.T Act.

2. Heard Mr. Kalantri, learned Advocate for Appellants, learned APP for Respondent No.1-State and Ms. Kulkarni, learned Advocate appointed to represent Respondent No.2. Perused charge-sheet.

3. The prosecution case in brief is that, the deceased Rahul Pithe was having an affair with Ms. Zakira Shaikh, i.e. daughter of Appellant No.1 and niece of Appellant No.2. The deceased was residing in front of the house of Appellants. Deceased Rahul Pithe was married and despite the said fact he had established relationship with Ms. Zakira Shaikh. That, Ms. Zakira Shaikh used to send messages to deceased Rahul Pithe on his mobile phone. The said fact was noticed by first informant i.e. the father of deceased namely Mr. Balu Pithe who inturn informed it to Smt. Nani i.e. aunt of Ms. Zakira Shaikh and had requested her to take care of Ms. Zakira Shaikh.

That, on 18th January, 2022 deceased Rahul Pithe was having holiday. Informant came home at about 6.00 p.m. from his duty when it was informed to him from the people in the vicinity that, since the morning Ms. Zakira Shaikh had gone somewhere and did not return to house. At about 7.30 p.m. informant made a call to Rahul Pithe and asked him where he was. Rahul Pithe told informant that, he was returning to home. Rahul Pithe came home at about 8.00 p.m., took tiffin and left his home at about 8.30 p.m. on his motorcycle. Informant tried to contact Rahul Pithe on his mobile phone between 9.00 to 11.00 p.m., however, Rahul did not respond to it. At about

11.30 p.m. informant noticed that, Appellants and their other relatives were passing from the lane on motorcycles and returned after sometime alongwith Ms. Zakira Shaikh. Informant also heard that, one of the relatives of Appellants namely Hussain Shaikh was telling the woman in the house that, “directly murder has taken place”. That, on 19th January, 2022 at about 5.30 a.m. informant gave call to Rahul Pithe however his mobile phone was switched off. At about 9.00 a.m. he got information from the people residing at Bhagatsingh Nagar, Ozar that, Rahul Pithe has been murdered near Chordiya Mall. Informant reached to the spot, saw dead body of Rahul Pithe in a pool of blood, a broken piece of a tile near it, injury to the head of Rahul Pithe and by seeing the said things he got fainted. In this brief premis, present crime is registered.

4. It *prima-facie* appears from record that, prosecution has relied on three main circumstances to connect Appellants with present crime. Firstly, motive i.e. daughter of Appellant No.1 was having an affair with deceased Rahul Pithe who was a married man. Secondly, informant Balu Pithe i.e. father of deceased Rahul Pithe saw Appellants leaving their house alongwith other relatives from motorcycle at about 11.30 p.m. of 18th January, 2022 and they are returned with Ms. Zakira Shaikh immediately thereafter. Thirdly, CCTV footage wherein Appellants were seen proceeding on motorcycle near Chordiya Mall.

5. Advocate Ms. Kulkarni submitted that, apart from the said circumstances, Ms. Zakira Shaikh in her statement recorded under Section 161 of CrPC has admitted that, she was with deceased Rahul Pithe up to 7.45 p.m. at Chordiya Mall when Rahul Pithe left her to bring tiffin. Ms. Zakira Shaikh has also expressed her suspicion against Appellants for their involvement in commission of murder of Rahul Pithe.

6. It is the settled position of law that the suspicion however strong it may be, cannot take the place of legal proof. In the present case, apart from the strong suspicion expressed by Ms. Zakira Shaikh and first informant prima facie, it appears that, the other attending circumstances linking Appellants directly or indirectly with the commission of present crime are missing. Even the CCTV footage analysis panchanama dated 1st February, 2022 only indicates that, on 18th January, 2022 at about 23.17.25 two persons were proceeding towards Chordiya Mall on motorcycle and the witness namely Dipak Yeole has identified that, it was being driven by Appellant No.2 and the Appellant No.1 was a pillion rider.

7. Learned Advocate for Appellants submitted that, the clothes of Appellants were seized by the Police immediately after their arrest on 20th January, 2022. However no blood stains were noticed by the Investigating Officer or panch witnesses on it.

8. In view thereof, according to us, during the pendency of the trial

of the said Special Case No.28 of 2022, Appellants can be released on bail.

Hence, the following Order :-

- (i) Appellants Babudin Kasam Shaikh and Nasir Amin Bhagwan be released on bail in Special Case No.28 of 2022, arising out of C.R. No. 6 of 2022 registered with Ozar Police Station, District Nashik, on their furnishing P.R. bond of Rs.25,000/- each with one or two separate local sureties in the like amount.
- (ii) Before their actual release from jail, Appellants are directed to provide their prospective residential addresses to Ozar Police Station, District Nashik and also to the Trial Court alongwith their mobile numbers or mobile numbers of their close relatives on which they can be contacted.
- (iii) During the pendency of the trial, Appellants shall not enter the jurisdiction of Superintendent of Police, Nashik (Rural) except for attending the present Special Case No.28 of 2022 at Niphad, District Nashik.
- (iv) Appellants are permitted to enter the jurisdiction of Superintendent of Police, Nashik (Rural) only for the

purpose of attending Special Case No.28 of 2022. Appellants are directed to remove themselves from the jurisdiction of Superintendent of Police, Nashik (Rural) immediately after their attending the Court proceedings in Special Case No.28 of 2022.

(v) After their release from jail, Appellants shall not tamper with the evidence and/or influence the prosecution witnesses.

(vi) Appellants are directed to attend each and every date of hearing before the Trial Court unless precluded for medical reasons. In case of two consecutive defaults in attending the Trial Court, the prosecution will be at liberty to file an Application for cancellation of bail.

9. In view of the above, impugned Order dated 8th June, 2022 passed below Exh-3 in Special Case No.28 of 2022 is set aside and Appeal is allowed in the aforesaid terms.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]