

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.766 OF 2021

Lakhan Pradip Koli ... Appellant
Vs.
State of Maharashtra and another ... Respondents

WITH

CRIMINAL APPEAL NO.1005 OF 2021

Siddaram Hanmant Birajdar (Patil) and another ... Appellants
Vs.
State of Maharashtra and another ... Respondents

Mr. Vikrant V. Phatate for Appellant in Appeal/766/2021.
Mr. Prashant Kamble for Appellants in Appeal/1005/2021.
Mr. Prasad B. Kulkarni for Respondent No.2 in both the Appeals..
Mr. Y. M. Nakhwa, APP for Respondents-State in both the Appeals.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**

DATE : APRIL 21, 2022

P.C. :

. Both these appeals are decided by this common order because they arise out of the same registered offence and the same investigation. Both these appeals are separately filed against the separate orders rejecting appellants' applications.

2. The orders impugned in both these appeals were passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, hereinafter referred to as the 'said Act'.

3. In Criminal Appeal No.1005 of 2021, the appellants, namely, Siddaram Hanmant Birajdar (Patil) and Sanjay Ramchandra Birajdar are seeking their release on bail and in Criminal Appeal No.766 of 2021, the appellant namely, Lakhan Pradip Koli is seeking anticipatory bail in connection with C.R.No.276 of 2021 registered with Akkalkot North Police Station, Solapur under Sections 307, 326, 324, 504, 143, 147, 148 and 149 of the Indian Penal Code; under Sections 3 and 25 of the Arms Act, 1959; under Sections 3(1)(r), 3(1)(s) of the said Act and under Section 7(1)(d) of Protection of Civil Rights Act, 1955.

4. For the sake of convenience, appellants are referred to by their names in the following discussion.

5. The appellants - Siddaram Hanmant Birajdar (Patil) and Sanjay Ramchandra Birajdar were arrested on 07.07.2021. Since then they are in custody. The appellant - Lakhan Pradip Koli is praying for anticipatory bail. The investigation is over and the charge-sheet is filed. There is a cross FIR in respect of the same incident, which is registered vide C.R.No.275 of 2021 at the same police station on 13.06.2021, mainly under Section 302 and other Sections of the IPC as well as under Sections 4 and 25 of the Arms Act. This FIR is lodged by the appellant Siddaram Hanmant Birajdar in connection with murder of one Vishwanath Patil from his group.

6. The FIR against the appellants is lodged by Chandrakant Gaikwad on 13.06.2021. He has stated that he is belonging to a scheduled caste. There

was some dispute between the informant's friend Suresh Koli and one of the accused Ramchandra Birajdar. At that time, the informant was with Suresh Koli, and therefore, the appellants and their group were holding grudge against him. On 12.06.2021 at about 5:30 p.m. when he was present in his house, accused Vishwanath Patil and the appellants - Sanjay Birajdar and Siddaram @ Siddhappa Patil along with some unknown persons came there in a four-wheeler. There are allegations that they raised quarrel with the informant. Appellant - Siddaram @ Siddhappa Patil took an axe from his car and gave a blow from the blunt side of the axe on the waist of the informant. One unknown person gave a blow with a sword on his left ribs. He fell down. Thereafter somebody assaulted on his head. His brother Dhondiba and father Masanna came there to save him. At that time, Dhondiba was assaulted on his head by somebody with some weapon. Sanjay Birajdar and Vishwanath Patil uttered insulting words with reference to the caste of the informant. On this basis, the FIR is lodged.

7. Mr. Kamble, learned counsel for the appellants viz. Siddaram Hanmant Birajdar (Patil) and Sanjay Ramchandra Birajdar submitted that they are in custody since July, 2021. The investigation is completed and charge-sheet is filed. Therefore, appellant's custody for interrogation is not necessary. The offence has not resulted in the death of anybody from the complainant's group, but in fact, Vishwanath Patil from the group of the appellants was murdered in the same incident, and therefore, it is clear that the informant is not telling the complete truth in his FIR. The appellants' further custody in this background is not necessary.

8. Mr. Vikrant Phatate, learned counsel for the Appellant - Lakhan Koli submitted that no role is attributed to this appellant in the entire charge-sheet. The main role is attributed to the other accused. At the highest, the allegations against him are that he assaulted the injured with kicks and fist blows. In the background of vague allegations, the appellant - Lakhan Koli's custodial interrogation is not necessary and he should be protected by an order of anticipatory bail.

9. Mr. Nakhwa, learned APP, on the other hand, submitted that there is sufficient material against all the appellants and the reliefs cannot be granted to them. The offence under the said Act is clearly made out. The manner in which the assault was caused shows that there was premeditation.

10. Mr. Kulkarni, learned counsel appearing for respondent No.2 supported the submissions of the learned APP. He also added that considering the enmity, if the appellants are granted reliefs, there is possibility of further possibility of such incidents.

11. We have considered the submissions made by learned counsel appearing for the respective parties. Besides the first informant, the statements of the injured witnesses are important. Informant Chandrakant's father Masanna has given his statement. He has stated that in the said incident when Chandrakant was being assaulted, he went near him. At that time, he suffered some blunt trauma on his right hand. His other son,

Dhondiba was also assaulted. He has stated that the appellant - Sanjay Ramchandra Birajdar and other accused Ramchandra Birajdar and Ajay Birajdar assaulted Dhondiba with sword and axe. The accused Ramchandra was having sword and Ajay was having axe. Dhondiba was assaulted with the said weapons on his head, neck, left foot and right wrist. The appellant – Sanjay Ramchandra Birajdar gave a blow with iron pipe on his (Masanna's) head. The informant Chandrakant was assaulted on his head, waist and left ribs.

12. The other injured Dhondiba Masanna Gaikwad has stated that the appellant Sanjay Birajdar gave a blow with an axe on his head. Accused Ajay Birajdar assaulted with sword on his wrist and left foot. Other three unknown persons assaulted this witness and Chandrakant with kicks and fist blows. Accused Ramchandra assaulted Dhondiba with sword on his face. The injury certificate in the charge-sheet is in respect of the injuries suffered by Dhondiba and Chandrakant. Dhondiba had suffered four injuries. Three injuries on cheek, foot and right forearm were described as simple injuries. There was one grievous injury on the left temporal region of scalp of size 5 x 1 x 1 cm caused by hard and blunt object. The other injured - Chandrakant had suffered one injury on head and the other as blunt trauma on abdomen. The head injury was sutured with size of 2 cm. The size of abdominal injury was 6 cm. in length. It was also sutured.

13. It is pertinent to mention at this stage that the incident in question had occurred on 12.06.2021 at 5.30 pm. Though the first informant has stated

that one of the unknown persons had given blow with sword on his left ribs, there is no such injury on his ribs. There are only two injuries. One is on the head and the other is on the abdomen.

14. Learned APP submitted that there is no injury certificate as far as Masanna is concerned. On instructions, he has stated that Masanna has suffered only simple injuries. Therefore, the case is confined to the injuries suffered by Dhondiba and Chandrakant. Dhondiba has suffered only one grievous injury on the head which is attributed to the Appellant Sanjay Birajdar. The other injuries were simple in nature. So far as the other Appellants viz. Siddhappa and Lakhan are concerned, no specific role has been attributed to them in respect of assaulting Dhondiba with some weapons. Appellant – Lakhan Koli is not even named in the F.I.R., but the prosecution case is that, he was one of the three unknown persons who had assaulted with kicks and fist blows.

15. According to the first informant Chandrakant, he was assaulted by Appellant Siddhappa on his waist with an axe but from the blunt side. Both the Appellants Siddaram Hanmant Birajdar (Patil) and Sanjay Ramchandra Birajdar are in custody since 07.07.2021. The injuries caused by them or those which are attributed to them did not cause death of either of the injured. The first informant was assaulted from the blunt side of the axe that also shows that the intention was not to commit murder of the informant. It is important to note that one Vishwanath from the group of the Appellants was assaulted and he died because of the head injury suffered in the same

incident. Therefore, it is clear that, the first informant is not telling the complete truth in his FIR against the present Appellants. The Appellants Siddaram Hanmant Birajdar (Patil) and Sanjay Ramchandra Birajdar are already in custody from 07.07.2021. Their further custody in the background of these facts is not necessary. As far as Appellant Lakhan Koli is concerned, a very minor role is ascribed to him, and the prosecution case appears to be that Lakhan Koli was amongst the unknown persons who had assaulted the first informant with kicks and fist blows. The narration of facts shows that both the sides were carrying deadly weapons and therefore it is difficult to believe that Appellant Lakhan Koli could have taken part by assaulting the first informant with kicks and blows. Therefore he also deserves protection of the order of anticipatory bail. Hence the following order :-

:ORDER:

- 1] Both the Appeals are allowed.
- 2] The Appellants Siddaram Hanmant Birajdar (Patil) and Sanjay Ramchandra Birajdar are directed to be released on bail in connection with C.R.No.276 of 2021 registered with Akkalkot North Police Station, Solapur on their executing P.R. bond of Rs.30,000/- (Rupees Thirty Thousand only) each with two sureties each in the like amount.
- 2] In the event of arrest of Appellant Lakhan Koli, he shall be released on bail in connection with C.R.No.276 of 2021 registered with Akkalkot North Police Station, Solapur on his

executing P.R. bond of Rs.30,000/- (Rupees Thirty Thousand only) with one or two sureties in the like amount.

- 3] The Appellants Siddaram Hanmant Birajdar (Patil), Sanjay Ramchandra Birajdar and Lakhan Koli are directed to report to Akkalkot North Police Station, District Solapur once every fortnight for a period of one year from today. They shall attend the dates in the Trial Court regularly, unless exempted by the Trial Court.
- 4] The Appellants shall not tamper with the evidence.
- 5] All the Appeals stand disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)

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