

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

CRIMINAL APPEAL NO. 853 OF 2021

Salman Sahiblal Shaikh

..Appellant.

Versus

The State of Maharashtra & Anr.

..Respondents

WITH

CRIMINAL APPEAL NO. 920 OF 2021

Prithvi Khengarji Soda

..Appellant.

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Raviraj R. Paramane for Appellant in Apeal/853/2021.

Ms. Rohini Wagh a/w. Mr. Aalekh Wagh & Ms. Pooja Dubey for Appellant in Apeal/920/2021.

Mr. Nilesh S. Patil for Respondent No.2.

Ms. G. P. Mulekar, APP for State/Respondent.

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

DATE : 31st MARCH 2022.

PC :

1. Both these Appeals are decided by this common order because they arise out of the same offence and the same investigation.

2. The Appellants are seeking their release on bail in

VINOD
BHASKAR
GOKHALE

Digitally signed by
VINOD BHASKAR
GOKHALE
Date: 2022.04.04
12:08:47 +0530

Gokhale

connection with C.R.No.87 of 2021 registered with Kopar Khairane police station, on 02/04/2021, under sections 307, 326, 394, 395, 143, 147, 148, 149 r/w. 34 and 120B of 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, both the appellants are referred to by their names wherever necessary.

3. Heard Shri. Raviraj Paramane, learned counsel for the Appellant Salman Shaikh, Ms. Rohini Wagh, learned counsel for the Appellant Prithvi Soda, Shri. Nilesh Patil, learned counsel for the Respondent No.2 and Ms. Mulekar, learned APP for the State.

4. The prosecution case is that, there was a dispute between one Rupesh Mhadse and Shyam Sonawane. Rupesh was brother in law of the complainant Tinu Kamble. On 31/03/2021, Rupesh was assaulted by Shyam Sonawane and his associates at Mahape MIDC. Rupesh had told about this dispute to the informant Tinu's brother Amol Kamble. On the same day in the evening, Amol made a phone call to Shyam Sonawane and

questioned him about that incident. It is alleged in the F.I.R. lodged by Tinu that, Shyam Sonawane abused Amol with reference to his caste. At about 9.00p.m., Shyam called Amol and asked to meet him. At about 11.00p.m. Amol had taken his pet dog out the house. The informant, his mother, informant's wife and sister were in the house. Suddenly, somebody knocked on the door. Tinu saw that 3 to 4 persons wielding sickles were asking for Amol and were abusing him. One of them saw Amol standing on the street. They went there. The informant also ran behind them. He saw Amol was running ahead and those 3 to 4 persons were chasing him. After some time, the informant was told by somebody on telephone that Amol was lying in injured condition near a Dargah. The informant went there. He saw that, Amol was lying unconscious. He was taken to Lions Hospital. Amol told him that, Shyam Sonawane had assaulted him by means of sickle and others had assaulted him on his wrist with sickles. They were abusing him referring to his caste. His gold chain was also snatched by them. On this basis the F.I.R. was lodged.

5. Learned counsel for the Appellants submitted that, there

is no reliable material against the Appellants. The appellant Salman was arrested on 02/04/2021 and Prithvi was arrested on 04/04/2021. Since then they are in custody. The investigation is over and the charge-sheet is filed. The informant had not suffered any life threatening injuries. He had suffered a major injury on his left arm. The offence has not escalated further. The identification of the appellants' is doubtful. Therefore, the appellants should be granted bail.

6. Learned APP, as well as, learned counsel for the informant opposed these appeals. They submitted that the victim Amol is brutally assaulted. He has lost sensation of his left hand and he has to take regular treatment for the same. They submitted that, some of the witnesses have identified the appellants in the test identification parade.

7. We have considered these submissions. With the assistance of learned counsel of both the sides, we have perused the charge-sheet. Apart from the first informant and the injured, there are other eye witnesses. Amol himself was a victim who has

narrated the incident of assault on him. He has stated about the background as mentioned by the first informant. So far as the main incident is concerned, Amol has stated that the person claiming himself as Shaym Sonawane took out a knife to assault him. Amol tried to save himself. The blow landed on his left arm causing bleeding injury. Others chased him and gave blows on his back. His chain was taken away. He was assaulted repeatedly with knives. Amol ran away and hid himself in the compound of one society. The appellants went away. Amol made a phone call to his brother with the help of a person who was present nearby. He had given description of the appellants in his statement.

8. The other witness was Amol's mother Baby Kamble. She has described the incident. She had seen 3 to 4 persons chasing Amol. She had not seen the actual assault, but she had given description of three persons chasing Amol.

9. Vaibhav is another eye witness. He had described the incident. He has stated how Amol was assaulted with knives. The injury to Amol's hand was attributed to Shyam.

10. All these witnesses had identified some suspects in the identification parade. The informant Tinu identified both the appellants. The victim Amol identified the appellant Prithvi but did not identify Salman. Baby identified Salman, but did not identify Prithvi. Vaibhav identified Prithvi but did not identify Salman. There were other eye witnesses namely Ramesh Khilare, Pravin Sarote and Rizwan Khan. None of these witnesses has identified either of the appellants. Thus, the identification of the appellants is not consistent. In any case, no specific role is attributed to them.

11. We have perused the injury certificate. The injury certificate significantly described only injury to the forearm of Amol. It is a serious injury. There was sensory loss to injured on left wrist. There are laceration of the ulnar nerve and artery.

12. Apart from that, there is a panchanama showing description of the CCTV footage. Even in that CCTV footage both the appellants are not specifically identified. Thus, the identification parade of both the appellants is not consistent. Apart from that, the injury sustained by Amol was serious, but it was on

the arm and it is attributed specifically to Shyam Sonawane and not to either of these appellants. Though Amol had described that he was given repeated blows with knives on his back, but there is no such injury certificate supporting his case. Therefore, clearly there is some exaggeration in the version of Amol. The appellants are already in custody since past about a year. Their further custody will not serve any purpose. The investigation is over. Considering the above discussion, both the appellants deserve to be released on bail. We have also taken into account the manner in which the incident has taken place and the possibility of future quarrels. Therefore, we are inclined to impose certain conditions on the appellants. Both the learned counsel for the appellants submitted that, conditions can be imposed putting restrictions on them from entering the area of Kopar Khairane police station for a certain period. Learned APP also submitted that such restriction is necessary. Considering this discussion, following order is passed:

ORDER

- (i) In connection with C.R.No.87 of 2021 registered with Kopar Khairane police station, both the appellants are directed to be released on bail on

their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.

- (ii) Both the Appellants shall not enter the jurisdiction of Kopar Khairane police station for a period of one year from today.
- (iii) Both the Appellants shall provide their addresses where they intend to reside and also their contact numbers before they are released on bail.
- (iv) Both the appellants shall give their attendance to the nearest police station once in a fortnight, for the period of one year, where they will be residing.
- (v) Both the Appeals stand disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)