

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

CRIMINAL APPEAL NO. 1393 OF 2019

Ananda @ Mayur Rajendra Sutar ... Appellant
Versus
The State of Maharashtra and Anr. ... Respondents

Mr. Tejas Hilge, for the Appellant.
Mrs. P. P. Shinde, APP for the Respondent No.1 – State.
Mr. Shantanu R. Phanse, Appointed Advocate, for Respondent No.2.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

DATE : 5th JULY 2022

P. C. :

. Heard learned counsel for the parties.

2 By this appeal, the appellant seeks his enlargement on bail in connection with C.R. No. 02 of 2019 registered with the Jaysingpur Police Station, Kolhapur for the alleged offences punishable under Sections 302, 323, 504 r/w 34 of the Indian Penal Code and Sections 3(2)(v), 3(2)(va), 3(1)(r), 6 of Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act (‘SC & ST Act’ for short).

3 Learned counsel for the appellant submits that there is absolutely no evidence under the SC and ST Act, as against the appellant. He submits that the appellant was granted interim bail vide order dated 2nd December, 2019, having regard to the same. Learned Counsel submits that as far as the offence under Section 302 of the IPC is concerned, the said act is not a premeditated act, but is an outcome of a quarrel that ensued between the deceased-Kishor Kamble and the appellant. He submits that the appellant is ready to co-operate in the conduct of the trial.

4 Mrs. Shinde, Learned APP, opposes the Appeal filed by the appellant, seeking his enlargement on bail. She submits that there are 4 to 5 eye witnesses in the said case and that the statements of the said witnesses have also been recorded under Section 164 of Cr.P.C. She submits that the statements of the said eye witnesses under Section 161 of Cr.P.C. are consistent with their statements under Section 164 of Cr.P.C. She further submits that the appellant was granted interim bail only having regard to the fact, that the provisions of SC & ST Act could not be applicable, de hors his role under Section 302 IPC. She further submits that the appellant

picked up a quarrel and assaulted the deceased with a tile, used for covering a gutter. She submits that the statements on record clearly show that the deceased-Kishor was caught completely unaware, of the act of the appellant. Mr. Phanse, learned Counsel for Respondent No.2, supported the learned APP.

5 Perused the papers. It appears from the statements of eye witnesses that the deceased-Kishor Kamble, the appellant and others were present at a friend's funeral on 31/12/2018. It appears that after the said funeral was over, the incident of assault took place on 01/01/2019 at about 00:30 hours. The deceased, the appellant and the others were sitting near the fire place; that the deceased inadvertently pushed/touched the appellant, pursuant to which the appellant abused the deceased and there was altercation between them. It appears that the friends, who were present there, tried to resolve the dispute, however, the appellant went and picked up a tile which was kept on the gutter and assaulted Kishor with the said tile on his head. It appears from the statements of the witnesses, that Kishor was completely unaware of the actions of the appellant. All the eye witnesses statements are consistent with each other. The

deceased-Kishor Kamble succumbed to the said injury i.e. an assault by tile on his head. The cause of death is stated to be a 'head injury'. The appellant was granted interim bail having regard to the allegations made under SC & ST Act. As far as provisions of IPC are concerned, prima-facie it is evident that the appellant assaulted Kishor Kamble with a tile on his head, and pursuant to which, Kishor succumbed to the said injury. The statements of the eye witnesses recorded under 161 of Cr.P.C. are consistent with their statements recorded under 164 Cr.P.C.

6 Considering the facts of this case, this is not a fit case to enlarge the appellant on bail. Accordingly, the Appeal stands dismissed. However, the trial of the appellant is expedited. The learned Judge to dispose of the case as expeditiously as possible and preferably within 12 months from the date of receipt of this Order.

7 Since the appellant was on interim bail, the appellant to surrender within two weeks from today before the appropriate Court seized of the said case.

8 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

9 Appeal is disposed of in the aforesaid terms.

10 All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.

REKHA
PRAKASH
PATIL

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by REKHA
PRAKASH PATIL
Date: 2022.07.07
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Rekha Patil

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