

RMA

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

CRIMINAL APPEAL NO. 1601 OF 2019

Suresh Taru Chavan .. Appellant
Vs.
The State of Maharashtra & Anr. .. Respondents

Mr. Vijay Kurle a/w Mr. Shivraj Kunchge and Mr. Samkit Shah for Appellant
Mr. S.S. Hulke, APP for State
Mr. Ritesh Thobde for Respondent No. 2

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

DATE : 12th SEPTEMBER 2022.

P.C.:

. This is an Appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [for short “SC & ST Act”] impugning the order dated 09.10.2019 passed below Exhibit 3 in Special Case No. 32 of 2019 for bail under Section 439 of the Code of Criminal Procedure [for short “Cr.P.C.”] in Crime No. 485/2019 dated 12.06.2019 registered with Sadarbazar Police Station, Solapur City for the offences punishable under Sections 302, 201 and 327 r/w. Section 34 of the Indian Penal Code (for short “IPC”) and Section 4/25 of the India Arms Act and Section 3(2)(va) of the SC & ST Act.

2. Heard Mr. Kurle, learned Advocate for Appellant, learned APP for State and Mr. Thobde, learned Advocate for Respondent No. 2. Perused entire chargesheet.

3. Appellant is accused No. 2 as per the final report dated 07.09.2021 submitted by the police. The said case is now culminated into Special Case No. 32 of 2019.

It is the prosecution case that, the deceased namely Rajesh Kamble was an Advocate by profession. That, Appellant is also an Advocate by profession. Accused No. 1 - Sanjay @ Banti Kharatmal, Appellant and deceased Rajesh Kamble were friends. It is alleged that, in order to steal gold ornaments which were on the person of deceased Rajesh Kamble, Appellant and accused No. 1 in connivance with each other called the deceased at the residence of accused No. 1 on 08.06.2016 at about 11:00 a.m.; served him tea with stupefying substance and after Rajesh Kamble started losing his consciousness; assaulted him with hammer on his head and chopper. It is further alleged that, Appellant subsequently severed body parts of the deceased, stuffed them in gunny bags and after robbing the ornaments on the person of the deceased, fled from the scene of offence. In this brief premise, the prosecution has arrested Appellant on 14.06.2019.

4. It is an admitted fact on record that, the severed body parts of deceased Rajesh Kamble were found stuffed in a gunny bag in the house of accused No. 1 – Sanjay @ Banti Kharatmal. Perusal of record indicates that, a witness Pravin Wade in his statement recorded under Section 161 of Cr.P.C. has stated that, on 08.06.2019 at about

11:30 a.m., he saw accused No.1 – Sanjay @ Banti Kharatmal, deceased and Appellant standing outside the house of accused No. 1 and were chitchatting. He therefore asked certain questions to accused No. 1 and left the said place. After he returned from outstation on 19.06.2019, he came to know that, on 12.06.2019, the severed parts of dead body of Rajesh Kamble were found in the house of accused No. 1 Sanjay.

5. Another witness namely Mr. Kumar Raskonda in his statement has stated that, on 08.06.2019 at about 12:30 p.m., he saw accused No.1 along with Appellant passing through his shop on a Honda Shine Motorcycle. That, he gave a call to the co-accused Banti Kharatmal however, he did not stop and left the place. He noticed Banti Kharatmal and Appellant in frightened condition.

6. *Prima facie*, it appears that, this is only legally admissible piece of evidence against the Appellant. The prosecution has pressed into service the theory of 'last seen together' in the company of deceased, the Appellant and co-accused Sanjay @ Bunty. The recovery of articles panchnama under Section 27 of the Evidence Act at the behest of accused No. 1 *prima facie* indicates that, he exonerated Appellant from the commission of present crime. We are mindful of the fact that, the confession given by the said co-accused in the said panchnama though inculpatory is not admissible in the eyes of law. We have referred to the said document only to test the case of the

prosecution on its probability as we are considering the Appeal of the Appellant for bail at pre-trial stage.

7. Mr. Thobde, learned Advocate for Respondent No. 2 submitted that, there are some antecedents against Appellant under Section 379 of IPC.

8. In view of the above, according to us, during pendency of the Special Case No. 32 of 2019 arising out of Crime No. 458/2019 registered with Sadarbazar Police Station, Solapur, Appellant can be released on bail.

9. Hence, the following order:-

- (i) Appellant be released on bail in on his furnishing P.R. bond of Rs. 50,000/- with one or more solvent local sureties in the like amount;
- (ii) After his release from jail and during the pendency of trial, the Appellant shall attend Sadarbazar Police Station, Solapur on every first Monday of the month between 11:00 a.m. and 01:00 p.m. and mark his presence;
- (iii) Appellant shall attend all the dates before the trial Court unless precluded on medical grounds;
- (iv) The Appellant shall not tamper with the evidence and / or pressurize the prosecution witnesses;
- (v) In case of any two consecutive defaults in compliance with the clause Nos. (ii) and / or (iii) above, the Respondents

will be at liberty to file an application seeking cancellation of
bail of Appellant.

10. In view of the above, impugned order dated 09.10.2019 passed
below Exhibit 3 in Special Case No. 32 of 2019 is hereby set aside and
the Appeal is allowed in the aforesaid terms.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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