

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO. 263 OF 2022

Sherali Moti Sayyad,
Aged 20 years, Occ. - Labour,
R/o Jamankar nagar, Yavatmal.
(Presently in District Prison,
Yavatmal)

.... **APPELLANT**

// **VERSUS** //

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station Lohara, Yavatmal.
- 2) Akash Pundlik Wankhede,
Aged 23 years,
R/o Netaji Nagar,
Yavatmal (City).

.... **RESPONDENTS**

Mr. R.M. Daga, Advocate for the Appellant.
Mr. M.J. Khan, Additional Public Prosecutor for Respondent No.1
Mr. N.L. Jaiswal, Advocate (appointed) for Respondent No.2.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATED : 27.06.2022

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard. **Admit.** Heard finally by consent of the learned counsel appearing for the parties.
2. Respondent No.2 though duly served is absent. Respondent No.2 has been provided with services of an Advocate for legal aid, who was initially absent but later on he appeared and we have heard him.

3. It is seen that the Appellant has not been named in the First Information Report (FIR) filed by one Mr. Akash Wankhade. It is further seen that in the statement of Mr. Arihant Kale recorded on 11.12.2019, the next day after the incident, nothing has been stated that this Appellant took part in the assault and it is only stated that the Appellant was seen to be chitchatting with the accused persons at the Panthela. It is further seen that in the supplementary statement of Mr. Arihant Kale, recorded on 04.02.2020, exactly after 54 days from the incident, just one general allegation has been made that this Appellant along with other accused persons had brutally assaulted the deceased. However, there is no recovery of weapon made from the Appellant. It is also seen that the cloths seized from this Appellant did not bear any blood stains. It is further seen that, though the Appellant has been arrested on 26.12.2019 and though the charge-sheet has been filed some time in March 2020, so far the trial has not progressed and in fact, even the charge had not been framed against this Appellant. Then, the co-accused of the Appellant, one Rahul Patil has been granted bail by this Court after withdrawal of the earlier application filed by this Appellant which registered as LD-VC-Appeal No.122 of 2020.

4. Considering the above referred facts and circumstances of the case, we find that there are changed circumstances appearing in

the case of this Appellant which could be seen from releasing of his co-accused Rahul on bail by this Court on 08.12.2022 in Criminal Appeal No. 414 of 2020 after withdrawal of earlier appeal and the Appellant standing on better footing than Rahul. Besides, if no charge has been framed against this Appellant even after two and half years of his being in the jail, the possibility of expeditious conclusion of the trial against this Appellant, whose specific role has not been pointed out, appears to be quite remote. On these grounds, we are of the view that this Appellant has made out his case for his release on bail.

5. The Appeal is allowed.

6. It is directed that the Appellant be released on bail on furnishing P.R. bond of Rs.50,000/- (Rs. Fifty Thousand only) with one or two solvent sureties in the like amount, on conditions that the Appellant shall regularly attend his trial before the trial Court and shall co-operate with the Presiding Officer for expeditious disposal of the trial and shall not tamper the prosecution witnesses.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)