

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

CRIMINAL APPEAL NO. 718 OF 2023

Nitish Satish Patange

...Appellant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr.Rahul K. Dhaigude - Advocate for Appellant in Criminal Appeal No. 718 of 2023.

Mr.S.R.Agarkar - APP for Respondent No.1 - State.

Mr.Ritesh Thobde - Appointed Advocate for Respondent No.2 on Criminal Appeal No. 718 of 2023.

Mr.Prashant Namdev Dhumal - HC - Shirwal Police Station - District : Satara.

CORAM : S. M. MODAK, J.

DATE : 7th DECEMBER 2023

P. C. :-

1. Heard learned Advocate Shri.Dhaigude for the Appellant, learned APP for Respondent No.1 - State and learned Advocate Shri.Thobde - Appointed as Legal Aid Counsel for the First-Informant.

2. The case is based on circumstantial evidence. The deceased was murdered by firing on 20th February, 2022 on the terrace of one Lake Place building at Shirwal. Though no one has seen the firing, one Ajit Suresh Bhate of that building informed Shirwal Police Station that one person is lying in the terrace in the pool of blood. That is why, the First-Informant - Satish Ganpat Aadelwar - PSI visited the spot and confirmed

the news and thereafter, lodged the complaint with Shirwal Police Station on 20th February, 2022. It was registered under Section 302 of Indian Penal Code, 1860 [“IPC”] against an unknown person. Whereas, there is a statement of one Govind Jaddu Sah (Page No.360) who runs a pan shop in front of pure wage hotel in front of hotel Shivsagar. On 20th February, 2022, he has seen one Eeco car parked in front of his pan shop. After 5.00 p.m., he heard an noise of fire cracker. Later on, he came to know that one murder has taken place.

3. The body was identified as a Sanjay Subhash Patole. During investigation, the Police have arrested the present Appellant and he is also charge-sheeted along with others for the offence punishable under Sections 302, 201 and 120-B read with 34 of IPC, Sections 3, 25 of the Arms Act, 1959 and Section 3(2)(v) of the Scheduled Castes and the Schedules Tribes (Prevention of Atrocities) Act, 1989 [“SC & ST Act”]. He was not granted bail by the trial Court.

4. Learned APP and Mr.Thobde invited my attention to the following circumstances :-

- (a) The seizure of mobile handset into pieces at the instance of this Appellant on 21st February, 2022 [Page No.178].
- (b) The statement of one Akshay Bade recorded under Sections 161 and 164 of the Code of Criminal Procedure, 1973 [“Cr.P.C.”]. He was one of the persons who accompanied the deceased and other

Accused including the arrested Accused - Tarbej Sutar. The present Applicant and other co-accused all of them went to Sarola, Taluka : Saswad in separate two cars. In the afternoon, they have consumed liquor and have a non wage food. At that time, one Tatya told the arrested Accused Tarbej that the deceased is going to kill him by giving poison. Being annoyed, Tarbej replied that they will kill him earlier to that. At that time, this Appellant was present.

- (c) The 164 statement.
- (d) There are also other statements who were present at the time of this travel and the meeting at the teen shade.

5. As against this, learned Advocate Shri.Dhaigude submitted that the evidence of hatching of conspiracy is inadequate and the witnesses have not said what are the utterances by this Appellant in that meeting. According to him, the identity of pieces of mobile alleged to be seized at his instance is not proved. There are no call details report and no verification of a sim card. He submitted that even though dog squad has visited the terrace, it has not led to any incriminating material.

6. It is true that the incident of hatching of conspiracy took place in first week of February, whereas, actual incident took place on 20th February, 2022. It is not the case of Prosecution that this Appellant was present at the time of actual firing or he was seen in any of the car in which the deceased and others

have travelled. There is no case of Prosecution about recovery of any incriminating material.

7. I have perused the order passed by the trial Court. Merely because these materials are there, one cannot detain a person behind bar till conclusion of the trial. Ultimately, the entire material has to be seen and the Court has to satisfy himself that it is sufficient to detain any accused person till the conclusion of the trial. On the basis of above materials, one can very well say that there is evidence of hatching of conspiracy against the Appellant but there is no material pointed out to me that he actually took part in eliminating the deceased on the date of incident. So, the trial Court has not considered all these factors. So,, I am inclined to grant him bail.

8. Hence, following order :-

ORDER

- (i) Appeal is allowed.
- (ii) The order dated 13th June, 2023 passed by the learned Special Judge – Wai is hereby set aside.
- (iii) Appellant Nitish Satish Patange be released on bail in connection with C.R. No. 41 of 2022 registered with Shirwal Police Station – Satara on furnishing personal bond and surety bond of Rs.25,000/-.
- (iv) Appellant not to enter the Pune city till conclusion of the trial.
- (v) Appellant to furnish his alternate place of residence to the Investigating Officer and to the trial Court and to inform the change, if any.

(vi) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.

9. These are my prima facie observations. Let learned trial Court need not be influenced by them.

10. In view of the above, Appeal is disposed of.

11. Learned Appointed Advocate Shri.Thobde be paid the necessary fees as per the Rules.

[S. M. MODAK, J.]