

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

CRIMINAL APPEAL NO. 440 OF 2022

Sagar @ Nikhil Jagdish Kate,
Age : 21 Years, Occ: Student,
R/at Pimpale Saudagar,
Near Datta Mandir,
Pune – 411 027
(Presently lodged in Yerwada Jail)

...Appellant

Versus

1. The State of Maharashtra
(At the instance of Sr. Inspector,
Sangvi Police Station)

2. Jitesh Vasant Jagtap,
Age: 44 years, Occ: Business,
Residing at : Jagtap Nagar,
Near Buddha Vihar,
Pimple Saudagar, Pune

...Respondents

Mr. Niranjan Mundargi i/b Ms. Keral Mehta for the Appellant

Ms. P. P. Shinde, A.P.P for the Respondent No.1-State

Mr. Niranjan Mogre i/b Mr. Sujay H. Gangal for the Respondent
No. 2

PSI Mr. S.S. Khalate from Sangli Police Station, is present in Court

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
WEDNESDAY, 23rd AUGUST 2023**

JUDGMENT (Per Revati Mohite Dere, J.) :

1 Heard.

2 Admit. Learned A.P.P waives notice on behalf of the
respondent No.1-State. Mr. Mogre waives notice on behalf of
the respondent No.2.

3 By this appeal, preferred under Section 14A of the
Scheduled Castes and the Scheduled Tribes (Prevention of
Atrocities) Act (for short 'SCST Act'), the appellant has
impugned the order dated 18th February 2022 passed by the
learned Special Judge, Pune, by which, the appellant's application
(Exhibit 15) was rejected by the said Court. Accordingly, the
appellant seeks his enlargement on bail in connection with C.R.
No.306/2020, registered with the Sangvi Police Station, Pune, for

the alleged offences punishable under Sections 302, 143, 147, 148, 149 of the Indian Penal Code and under Sections 3(1)(r)(s), 3(2)(va), 3(2)(v) of the SCST Act and Sections 37(1), 135 of Maharashtra Police Act.

4 Learned counsel for the appellant submits that there is a contradiction between the information given by the first informant, pursuant to an alleged dying declaration made by deceased-Viraj on the one hand and the statements of the eye-witnesses, in particular, the statements of Abhishek and Anant Dongre. He submits that the facts in question would reveal that the appellant was not armed with a weapon, as is evident from the statement of Maulana Shaikh, at the relevant time. He further submits that the deceased-Viraj was found to have sustained only one injury on his head, which was the cause of his death. He submits that it is after an altercation between the accused and the deceased, which led to the incident in question.

5 Learned A.P.P opposes the grant of bail. She submits that no interference is warranted in the impugned order, rejecting the appellant's bail application.

6 Learned counsel for the respondent No. 2 also opposes the grant of bail. He submits that the statement of Maulana Shaikh would show that co-accused-Hemant was driving the tempo and that he intentionally dashed against the Scooty driven by the deceased. He submits that Maulana's statement would reveal that after the scuffle between the accused and the deceased, the co-accused-Hemant pulled out a tommy from the tempo and chased Viraj and that the appellant and another co-accused-Rohit also chased Viraj. He submits that although Maulana has not alleged that the appellant was armed with any weapon, he submits that subsequently, the statements of Abhishek and Anant would show that the appellant has assaulted the deceased with a tommy, after which, Hemant assaulted the

deceased again, with a tommy, on his head. He submits that the intent of the appellant and the co-accused was to cause death of the deceased-Viraj.

7 Perused the papers. This Court has granted regular bail to co-accused Jagdish Kate and Kailash Kate.

8 According to the first informant, who was also present at the spot at the time of the alleged incident, the deceased himself had made an oral dying declaration to the first informant and his mother disclosing to them the complicity of all the accused, including that of Jagdish and Kailash. This Court vide order dated 28th September 2021 passed in Criminal Appeal Nos. 120/2021 and 128/2021, after observing the contradiction in the statement made by the deceased to the first informant on the one hand and the evidence of the eye witnesses, enlarged Jagdish and Kailash on bail.

9 We have perused the statement of the first informant. It appears that the alleged oral dying declaration was made by the deceased to the first informant and to his mother, wherein, he has named 6 accused who assaulted him and the role of each of the said accused. In the oral dying declaration, the appellant is stated to have assaulted Viraj with a stone on his back.

10 Perused the statements of Abhishek, Anant and Maulana. It appears that Maulana had first seen the incident at Datta Mandir. It appears that thereafter, a scuffle took place between them, pursuant to which, Hemant dashed his tempo on Viraj's motorcycle; thereafter, again there was a scuffle, pursuant to which, Hemant went to the tempo and pulled out tommy and chased Viraj (that the appellant and co-accused-Hemant were not armed with any weapon). Thereafter, the said incident of assault was witnessed by Abhishek and Anant. Anant in his statement has stated that one person whom he identified as Hemant assaulted

Viraj with an iron rod on his head. He has stated that initially one person assaulted Viraj on his head with an iron rod, after which, the said iron rod was taken by co-accused Hemant and thereafter, the first and third assailants started assaulting Viraj with kick and fist blows. The first person is stated to be the appellant. As far as Abhishek is concerned, he has stated that two persons i.e. the appellant and co-accused Hemant assaulted deceased-Viraj with an iron rod, pursuant to which, Viraj started bleeding through his nose, ears and mouth. The witnesses have further stated that thereafter the accused ran from the spot. As far as test identification parade is concerned, Anant has not identified the appellant in the test identification parade, as being one of the assailants.

11 Considering the evidence as stated aforesaid, and *prima facie*, the inconsistency in the alleged role played by the appellant and the fact that the appellant is in custody since 8th June 2020 i.e. for more than 3 years and since till date, charge

has not been framed, the Appeal deserves to be allowed. Hence,
the following order :

ORDER

- (i) The appeal is allowed;
- (ii) The impugned order dated 18th February 2022 passed by the learned Special Judge, Pune in Special Case (Bail Application) No. 453/2020, stands quashed and set-aside;
- (iii) The appellant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (iv) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The appellant shall not enter the jurisdiction of Sangvi Police Station, Pune, for a period of one year from the date of his release;

(vi) The appellant shall not leave India, without the prior permission of the trial Court;

(vii) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(viii) The appellant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(ix) The appellant shall file an undertaking with regard to clauses (iv) to (viii) in the trial Court, within two weeks of his release;

(x) If there are two consecutive defaults either in attending the Police Station or if the appellant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the appellant's bail.

12 At this stage, learned counsel for the respondent No. 2 requests that this order be stayed. Prayer rejected.

13 Rule is made absolute and the appeal is disposed of in the aforesaid terms.

14 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.

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

GAURI GODSE, J.

REVATI MOHITE DERE, J.