

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1177 OF 2022

Mukhtar Massihuddin Ali

... Appellant

V/s.

The State Of Maharashtra And Anr.

... Respondents

Dr. Uday P. Warunjikar i/b Ms. Sonali R. Chavan for Appellant.

Mrs. M.H. Mhatre APP for Respondent No.1-State.

Ms. Savita M. Yadav, appointed Advocate for Respondent No.2.

**CORAM : A.S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 17th JANUARY, 2023.

PC. :

1. This is an Appeal under Section 14-A of the Scheduled Castes And Scheduled Tribes (Prevention Of Attrocities) Act, 1989 (for short "S.C. S.T. Act") for bail under Section 439 of Criminal Procedure Code (for short "Cr.P.C.") in C.R. No.131 of 2019, registered with Bharati-Vidyapith Police Station, Pune for the offences punishable under Sections 302, 364, 201, 120(b), 34 of the Indian Penal Code (for short "I.P.C.") and Section 37(1) r/w Section 135 of Bombay Police Act and Section 3(2)(v) of the S.C.S.T. Act, which is now culminated into Atrocities Special Case No.18 of 2019 pending before the learned Special Sessions Judge, Pune.

2. Heard Dr. Warunjikar, learned counsel for the Appellant and Mrs. Mhatre, learned APP for Respondent No.1-State. Perused charge-sheet.

3. It is the prosecution case that, the principal Accused namely Dharamprakash Verma (Accused No.1) was having animosity with Vinayak Sirsat (Deceased), as the deceased had taken P.O.P. material on credit from Accused No.1. That the deceased had also used derogatory rather indecent language against the wife and daughter of Accused No.1 and therefore the said Accused No.1 was having grudge in his mind against Vinayak Sirsat. That on 30th January, 2019, the deceased had called Accused No.1 at Swami Narayan Mandir Gate, Ambegaon Khurd. The Accused No.1 therefore called his accomplices namely the Appellant and Mohammad Faruq Isaq Khan (Accused No.3) with him. The Appellant went to the spot with his own Swift Dzire Car. All the three Accused persons thereafter conspired with each other and decided to commit murder of Vinayak Sirsat. They lured Vinayak to come with them at a particular spot and asked him to sit in the said Swift Dzire Car. It is alleged that, in the car Accused No.1 started assaulting deceased. That all the three Accused persons thereafter assaulted deceased with fists. That the Accused No.3 thereafter came on the backside of the Car and stabbed deceased with knife to death. The Accused No.1 and Appellant thereafter tied the body of deceased by a black coloured wire and threw it in Mutha Ghat.

During the course of investigation, the Appellant came to be arrested on 15th February, 2019. After completion of investigation, Police have submitted charge-sheet. By the impugned Order dated 7th November,

2022, the Trial Court has rejected Application of the Appellant for bail. In this brief premis, present Appeal is filed.

4. It is an admitted fact on record that, the co-accused namely Mohammad Faruq Isaq Khan, who has been attributed with the role of assault/stabbing deceased with knife has been granted bail by the co-ordinate Bench by its Order dated 23rd June, 2022. As noted earlier and as per the prosecution case, role attributed to Mohammad Faruq Isaq Khan is assaulting the deceased with knife inside the Car. No such role is attributed to the Appellant. What has been recovered from the Appellant is the Swift Dzire Car in which it is alleged that, Vinayak was stabbed till death. Admittedly, the present case is based on circumstantial evidence. According to us, the role attributed to the present Appellant is little lesser than attributed to Accused No.3, Mohammad Faruq Isaq Khan.

In Order dated 23rd June, 2022 passed in Criminal Appeal No.419 of 2021, the co-ordinate Bench has observed that the Accused Nos.2 and 3 have not been named nor identified by the witness i.e. Satish Nirmal.

5. In view of the above, Appellant is entitled to be released on bail on the ground of parity. Hence, the following Order:-

ORDER

- (i) Appellant be enlarged on bail in C.R. No.131 of 2019, registered with Bharati-Vidyapith Police Station, Pune on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two local sureties in the like amount;

- (ii) Appellant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) 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 trial Court as well as to the concerned Police Station in writing;
- (iv) Appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case and shall not commit similar offence;
- (v) Appellant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;
- (vi) An undertaking to the aforesaid clauses (ii) to (v) shall be filed by the Appellant in the Registry of the trial Court, within one week of his release;
- (vii) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report a to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6. Appeal is allowed and disposed off in above terms.

7. 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.
8. All the concerned to act on an authenticated copy of this Order.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)