

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 870 OF 2022

Sahil Sheikh Rafique Sheikh
Aged about : 21 years, Occupation :
Private, R/o. Gautam Nagar, Near House
of Rahul Mistree, Dhamangao Road,
Yavatmal. (Accused No.9)

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... Appellant

Versus

1. State of Maharashtra,
Through Police Station Officer, Lohara,
District : Yavatmal.
2. Akash s/o Pundalik Wankhede,
Aged about : 23 years, Occupation :
Service, R/o. Netaji Nagar, Yavatmal,
District : Yavatmal.

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... Respondents

Mr.B.H. Takam, Advocate for appellant.

Mr. M.J. Khan, APP for respondent No.1.

Mr. Saurabh Singha, Advocate (appointed) for respondent No.2.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.
DATE : 03.02.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

Heard.

(2) **Admit.** Heard finally by consent of both the learned
counsel for the parties.

(3) This is an appeal in terms of Section 14-A of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, raising a challenge to the order of rejection of regular bail in Special Session Case No.29/2020, vide order dated 05.09.2022. The appellant was came to be arrested in Crime No.241/2019, for the offences punishable under Section 143, 147, 148, 149, 307, 302 of the Indian Penal Code, Section 4/25 of Arms and Section 135 of Bombay Police Act.

(4) After filing of charge-sheet initially the appellant has applied to the Sessions Court for grant of bail, which was rejected vide order dated 27.04.2020. Being aggrieved, the appellant has applied to this Court in Criminal Appeal No.122/2020 however, as this Court has expressed non-inclination, the appeal was withdrawn which reflects in order dated 23.06.2020 of this Court. During course of time, this Court in Criminal Appeal No.414/2020 has released one of the co-accused, namely, Rahul Patil on bail vide order dated 08.12.2020. In view of that, appellant – Sahil Sheikh, has applied once again to this Court for bail in Criminal Appeal No.58/2021, on the ground of parity with Rahul Patil. However, this Court vide order dated 20.04.2021, has declined to grant bail. The things repeated as thereafter, this Court

has released accused No.10-Sherali Moti Sayyad, on bail in Criminal Appeal No.263/2022, vide order dated 27.06.2022. In view of that, again appellant applied to Sessions Court for bail, this time claiming parity with accused No.10-Sherali Moti Sayyad. The trial Court vide impugned order (Exhibit 197) dated 05.09.2022, has rejected the bail stating that the role of applicant – Sahil Sheikh Rafique Sheikh is different, than role of accused No.10-Sherali Moti Sayyad and therefore, parity would not apply.

(5) Till date on every occasion applicant's bail application was rejected by trial Court as well as this Court. The only ground for consideration is whether in given circumstances applicant is entitled for bail on the ground of parity with accused No.10 -Sherali Moti Sayyad. It reveals from the impugned order that similarly, applicant has claimed bail only on the ground of parity which was rejected by trial Court however, the trial Court did not assign reasons, as to why parity would not apply. Perusal of impugned order discloses that trial Court has reproduced some portion of the earlier order dated 19.09.2020, relating to some other person (accused No.5) and merely expressed that parity would not apply.

(6) As a matter of fact, when the bail is claimed on parity, the trial Court ought to have considered the role of accused No.10-Sherali Moti Sayyad, as well as role and available material against appellant accused No.9- Sahil Sheikh. However, there is total non-consideration of said aspect in the impugned order. In the circumstances, we feel it appropriate that trial Court should consider these aspects, with all seriousness and decide the application afresh. We expect that this time trial Court will consider the ground of parity as canvassed on its own merits and would pass a reasoned order.

(7) In view of that, impugned order passed on Exhibit 197 in Special Session Case No.29/2020 dated 05.09.2022, is hereby quashed and set aside.

(8) Application at Exhibit No.197 is restored with direction that the trial Court shall consider the bail application afresh on its own merits, after hearing both sides.

(9) The learned counsel for the applicant's shall appear before the trial Court on **08.02.2023**, without notice, on which the trial Court shall fix a suitable date as per its schedule and dispose the application in accordance with law.

(10) Fees of appointed counsel be paid as per rules.

(11) Appeal stands disposed of in above terms. Registry to inform the concerned Court.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Prity