



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.665 OF 2024

Golu @ Arbaj Khan Ajgar Khan,
Age: 24, Occ- Student,
R/o- Kawde Nagar, Bhusawal,
Tal. Bhusawal & Dist. Jalgaon.

...Appellant

Vs.

1) The State of Maharashtra
(At the instance of Bhusawal
City Police Station, Tal. Bhusawal
& Dist. Jalgaon)

2) Hansraj Ravindra Kharat,
Age-20, Occ-Education,
R/o. Samta Nagar, Near Railway
Station, Bhusawal,
Tal. Bhusawal, Dist. Jalgaon

...Respondents

...
Mr. Shaikh Nasimoddin Rafiyoddin, Advocate for Appellant
Mr. R.B. Dhaware, APP for State
Mr. Vinod S. Patil, Advocate for Respondent No.2

....

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 03rd OCTOBER, 2024
PRONOUNCED ON : 07th OCTOBER, 2024**

ORDER :

1. By this appeal filed under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, appellant seeks bail under Section 439 of Cr.P.C. in C.R. No.222/2019, registered with Bhusawal City Police Station, Dist. Jalgaon, for offences punishable under Sections 302, 307, 120-B, 397 r/w 34 of the Indian Penal Code, Section 3/27, 4/25 of the Arms Act, Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, and Sections 37(1)(3) r/w 135 of the Maharashtra Police Act, which has culminated in Special Case No.02/2024.

2. On 07/10/2019, at about 08:26, Hansraj Ravindra Kharat, lodged FIR against Raj Boxer (full name not known), Raja Moghe (full name not known) and Mayur Surwade (full name not known) in short alleging that he is residing in joint family along with his father Ravindra Kharat, uncle Sunil Kharat, mother Rajani Kharat, aunt Rekha Kharat, maternal aunt Bharati Kharat, aunt Kala Kharat, Bhushan, Kiran, Atish, Rajkumar, Premasagar, Rohit, Rajan, sister-in-law Namrata Kharat, Sukeshini Kharat, Nikita Kharat, Prerna Kharat and Rupali Amit Gaikwad. He is taking education in first year at D.L. Hindi College. On 06/10/2019, at about 08:00 to 08:30 p.m. he was playing *Dandiya* at Samta Nagar Chauk. At that time, one Ahire nurse residing near his house told him that there was firing near Red Church. He, therefore, stopped playing *Dandiya* and sent everybody home. He then immediately rushed to his home and told his father about the incident at Red Church. His father said that firing has taken place at Red Church and they have no concern with the same. At that time, three boys came from behind on scooty, two boys sitting behind on scooty got down and fired from pistol. The scooty was being driven by Raj Boxer and two boys behind him were Raja Moghe and Mayur Surwade @ Gudda. Raj Boxer and Raja Moghe were holding silver colour pistols and Mayur @ Gudda was

holding chopper. Since they attacked suddenly, his father received bleeding injury due firing and ran away in a lane to save himself and tried to enter Pawar's house so as to save himself. Since the door of that house was closed, he tried to hide in the outside bathroom. Informant also tried to save his father. At that time, Raj Boxer and Raja Moghe said that they have already killed his two brothers and if they let him go then he will not leave them. Therefore, all three assailants again started assaulting. Informant received bullet injury on right side of the back due to which he sat on the floor. Raj Boxer and Raja Moghe fired at his father and Mayur @ Gudda assaulted his father with chopper. At that time, his uncle Sunil Kharat and mother Rajani Kharat intervened. Mayur assaulted on the neck of uncle Sunil. Raj Boxer and Raja Moghe assaulted informant's mother with stone. Thereafter, all three accused ran away from the spot. All injured were brought to the Godavari Hospital, and from there informant's father and mother were taken to Jalgaon Civil Hospital. Sujit @ Suraj Sapkale told informant that Raj Boxer, Raja Moghe and Mayur Sarwade @ Gudda shot his brother Prem Sagar and Rohit, and also assaulted Sumit Gajare, who stays with Prem Sagar.

3. On the basis of this information, FIR is registered at C.R. No.222/2019, with Bhusawal City Police Station, for offences punishable under Sections 302, 307, 120-B, 397 r/w 34 of the Indian Penal Code and Section 3/27, 4/25 of Arms Act and Section 3(2)(iv)

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 37(1)(3) r/w 135 of the Maharashtra Police Act.

4. Accused Raja Moghe @ Shekhar Hiralal Moghe, Raj Boxer @ Mohsin Ajar Khan and Mayuresh Ramesh Surwade were arrested on 07/10/2019 and accused Akash @ Sagar Sukdev Sonawane was arrested on 11/10/2019. On completion of investigation prosecution filed charge-sheet on 31/12/2019 against five accused persons namely 1. Raja Moghe @ Shekhar Hiralal Moghe, 2. Raj Boxer @ Mohsin Ajar Khan, 3. Mayuresh Ramesh Surwade, 4. Akash @ Sagar Sukdev Sonawane and 5. Golu @ Arbaj Khan Ajar Khan, alleging that accused Nos.1 to 3 killed Sonu @ Rohit Ravindra Kharat, Premasagar Ravindra Kharat, Sumit Sanjay Gajare, Sunil Baburao Kharat and Hampya @ Ravindra Baburao Kharat with the help of country made pistols and chopper and seriously injured informant and his mother. Appellant is implicated in the present crime with the aid of Section 120-B of I.P.C. alleging that he was involved in the conspiracy of commission of the offence. He was arrested on 05/03/2022.

5. Appellant filed Criminal Appeal No.129/2024 for bail. The said appeal was permitted to be withdrawn on 12/03/2024, as this Court was not inclined to grant bail, with liberty to file application for bail in case trial does not conclude within one year.

6. Heard learned advocate for appellant, learned APP for State and learned advocate for respondent No.2.

7. Learned advocate for appellant submits that all accused in the present crime were kept in Jalgaon Central Jail. Jail authority moved an application for transferring accused persons in the present crime in some different jail for security purpose. Permission to transfer them was granted by the Trial Court, however, at the instance of accused No.1 Shekhar Hiralal Moghe and others said order was stayed by the Trial Court on 22/06/2024. Thereafter on 10/07/2024 due to rivalry, accused No.1 Shekhar Hiralal Moghe assaulted informant's brother accused No.2 Mohsin Ajgar Khan with knife on neck and chest and murdered him in jail. He submits that there is no material showing involvement of appellant in the present crime. He submits that after murder of his brother appellant sought temporary bail to attend last rites of his brother, which was granted. Appellant has thereafter surrendered after performance of last rites of his brother. At the time of alleged offence appellant was 18 years of age and merely because he is brother of accused No.2 Mohsin Ajgar Khan, he is involved in the present crime. He is a boxer and was selected for national school boxing championship matches. Further submission is that the prosecution has cited 78 witnesses in the charge-sheet and charge is yet to be framed. Trial is, therefore, likely to take considerable time to conclude. He submits that appellant is now transferred to Aurangabad Central Prison after

murder of his brother. He therefore submits that by allowing the appeal appellant may be released on bail.

8. Learned APP, instructed by Investigating Officer who is present in the Court, vehemently opposed the appeal by submitting that in two incidents in the same night accused Nos.1 to 3 have killed five persons and seriously injured two. This would not be possible without there being any conspiracy. At the time of commission of offence and after that appellant was in constant contact with his brother accused No.2 Mohsin Ajar Khan and CDRs to that effect are collected during the investigation. Some of the witnesses have seen appellant in the company of his brother accused No.2 after the incident. After the incident appellant has absconded and he could be arrested only after three years. Therefore, there is every likelihood that he will abscond if released on bail. There is sufficient material on record to show the involvement of appellant in present crime. Considering the seriousness of offence and involvement of appellant, he is not entitled for bail. He further submits that while permitting appellant to withdraw the earlier appeal, liberty was granted to renew his prayer for bail after one year if the trial does not conclude by that time. Since the said period is not over, present appeal is not maintainable. He submits that the life of appellant will be in danger if he is released on bail and permitted to stay in Bhusawal. On instructions from Investigating Officer, he fairly concedes that

appellant has no criminal antecedents.

9. With the assistance of learned advocate for appellant, learned APP and Investigating Officer, I have perused the investigation papers and charge-sheet.

10. Indisputably, after withdrawal of appeal by appellant on 12/03/2024, Shekhar Moghe accused No.1 in present crime has murdered brother of appellant accused No.2 Mohsin Ajgar Khan in Jalgaon Central Jail. Accordingly C.R. No.218/2024 is registered with Jilhapeth Police Station, Jalgaon, for offence punishable under Section 103(1) of Bharatiy Nyay Sanhita, 2023.

11. Appellant is implicated in the present offence with the aid of Section 120-B of I.P.C. To show the involvement of appellant in criminal conspiracy, prosecution has strongly relied on the circumstance that before and after commission of offence appellant was in contact with his brother accused No.2 Mohsin Ajgar Khan and CDRs to that effect are collected during investigation. He was also seen in the company of co-accused after the incident.

Prosecution has not alleged direct involvement of appellant in commission of offence punishable under Sections 302 and 307 of I.P.C. as the said offence is committed by accused Nos.1 to 3. Except CDR reports and statements of some of the witnesses who have seen appellant with his brother after the incident, there is no other material showing involvement of appellant in the present crime. *Prima facie*, this appears to be weak piece of evidence

against appellant.

12. Appellant has no criminal antecedents. He was 18 years old student at the time of incident. Documents placed on record show that he was selected as boxer for national school games in boxing. True it is that he was absconding for about three years, but that itself is not sufficient to deny him bail, even innocent person if is accused of commission of serious offence may also abscond. Fact remains that after murder of his brother accused No.2 Mohsin Ajar Khan, he applied for temporary bail for attending obsequies. He was granted temporary bail and he has surrendered after performing obsequies of his brother. He is permanent resident of Bhusawal having deep roots in the society and he will be available for trial.

13. In the charge-sheet 78 witness are cited by the prosecution. Appellant has withdrawn his earlier appeal for bail on 12/03/2024, since then till date no charge is framed in Special Case No.02/2024. Obviously trial is not likely to conclude in near future. Appellant, therefore, need not be detained for indefinite period.

14. There is no merit in the contention of learned APP that appellant is not entitled to apply for bail before completion of one year's period from withdrawal of his earlier appeal and therefore, present appeal is not maintainable. It is well settled that accused is entitled to file successive bail application on the ground of change in circumstance.

15. In the light of aforesaid discussion appellant has made

out case for grant of bail in view of change in circumstance, as appellant is in jail for more than two and half years and the trial is not likely to conclude in near future and as *prima facie*, the evidence of conspiracy against appellant is weak.

16. In the result, appeal is allowed. Appellant Golu @ Arbaj Khan Ajar Khan be released on bail in C.R. No.222/2019, registered with Bhusawal City Police Station, District Jalgaon, for offences punishable under Sections 302, 307, 120-B, 397 r/w 34 of the Indian Penal Code, Section 3/27, 4/25 of Arms Act, Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and Sections 37(1)(3) r/w 135 of the Maharashtra Police Act, (Special Case No.02/2024) on furnishing personal bond of Rs.50,000/- with one surety in the like amount.

17. Appellant shall not enter Bhusawal town till conclusion of trial, except on the dates on which his presence is essential for sessions trial. Appellant shall not tamper prosecution evidence.

(NITIN B. SURYAWANSHI, J.)