

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

CRIMINAL APPEAL NO.1280 OF 2023

Mr.Rohit @ Anna Anil Fadtare

Age : 33 Years, Indian Inhabitant,
Residing at : Siddharth Nagar, Mohol,
District : Solapur.

**...Appellant
(Accused No.2)**

Versus

1. **The State of Maharashtra**
(Mohol Police Station vide
C. R. No. 640 of 2021).

...Respondent No.1

2. **Dadarao Narayan Shirsagar**
Age : 32 Years, Occu. : Auto
Ricksha Driver, Address : Siddharth
Nagar, Mohol, Solapur.

**...Respondent No.2
(Original Complainant)**

Mr.Girish Kulkarni–Senior Advocate i/b. Mr.Sujay Palshikar:-	Advocate for Appellant.
Mr.H.J.Dedhia:-	APP for Respondent No.1 -State.
Smt.Aruna Pai:-	Advocate for Respondent No.2.

CORAM : S. M. MODAK, J.

DATE : 25th JULY 2024

P. C. :-

1. Heard learned Senior Advocate Shri.Kulkarni for the Appellant –
Accused No.2, learned APP Shri.Dedhia for Respondent No.1 – State
and learned Advocate Ms.Pai for Respondent No.2 – First Informant.

2. It is true that in the offence registered at **Mohol Police Station, District : Solapur**, four **(4) Accused were granted bail**. Their details are as follows:-

- (a) Accused No.5 – **Akash @ Gotu Namdeo Barkade** and Accused No.6 – **Ramesh @ Gotu Sangam Sarvade** were granted bail by a Division Bench of this Court on 20th September 2022.
- (b) Accused – **Pintu Janardhan Surwase** was denied bail by this Court. However, the Hon'ble Supreme Court granted him bail as per the order dated 4th April 2024.
- (c) Co-accused – **Santosh Janardhan Surwase** is granted bail by this Court on 23rd April 2024.

3. Now, the present Appellant has applied for bail before the Court of Additional Sessions Judge – Solapur. It was rejected on **8th August 2023**. Now, on the ground of parity and absence of sufficient materials, he is asking for a bail and prayed for allowing his Appeal.

4. According to learned Senior Advocate Shri.Kulkarni, there is no difference in the role assigned to this Appellant as compared to the role assigned to the Accused which were granted bail. According to him, the motive cannot be considered as a sufficient ground to refuse a bail. The Hon'ble Supreme Court while granting bail to **co-accused Pintu Janardhan Surwase** has considered all the statements and came to the

conclusion that there is no specific overt act either of conspiracy or committing of crime. He also invited my attention to the observations made by the Division Bench and more specifically, the observations relating to the two statements recorded by the Police. They are of, **Shri.Shekhar Bansode** and **Shri.Bhalchandra Kamble** dated 15th November 2021. They are part of an additional compilation.

5. Whereas, according to learned APP and learned Advocate Ms.Pai, the role of this Appellant though of conspiracy, he has played a major part in hatching the conspiracy and in executing it through the **Accused No.1 – Bhaiya Alias Birmal Khelu Haswale**. She invited my attention to various statements, panchnamas showing the connection of this Appellant with other Accused and Accused No.1. Even, she prayed for expediting the hearing of the Sessions Case. She also submitted that there is an Application filed before the Hon'ble Supreme Court praying for cancellation of bail granted to **Accused – Pintu Surwase**. Furthermore, there is an Affidavit filed by the **First-Informant - Dadarao Narayan Shirsagar** mentioned the following facts:-

- (a) There are five (5) crimes registered against the present Appellant. The details are given in Para No.6 of the Affidavit.

- (b) The **co-accused – Pintu Surwase and Ramesh Sarvade** have filed discharge Applications before the trial Court and they want to delay the hearing of the Sessions Case. (Para No.8).
- (c) If, the present Appellant is released on bail, there is a possibility of tampering with the witnesses. (Para No.11).

6. For ascertaining, whether the role of this Appellant is similar to the role assigned to the Accused who were granted bail, it will be relevant to consider the materials placed against the present Appellant.

They are as follows:-

- (a) Two motives suggested by the **First Informant – Dadarao Narayan Shirsagar** who is the brother of one of the **deceased – Satish Narayan Shirsagar**. Whereas, one **Vijay Sarvade** is the another deceased. He has quoted two reasons for rivalry in between the **deceased Satish** on one hand and the present Appellant on the other hand. They are as follows:-
 - (i) Both the deceased have objected to certain entries in the electoral list to the Tahsildar as a result of which, the present Appellant was annoyed with them.
 - (ii) In one housing allotment scheme of the Government by name Ramai Gharkul Yojana, houses were sanctioned to both the deceased. Their file went missing from the Government office. When the **deceased Satish** inquired with the Collector office, the **present Appellant** and **co-accused Santosh Surwase** threatened that they will do whatever they want.

- (iii) There is one incident dated 31st December 2019 wherein the **present Appellant** and **co-accused Santosh Surwase** have threatened the **deceased – Satish** and one **Ashok Gaikwad** with the help of revolver.

7. The prosecution claims that due to this rivalry, the present Appellant along with co-accused have hatched a conspiracy to eliminate the said **Satish Shirsagar** and **Vijay Sarvade** and that is why, they have hired the **Accused No.1 - Bhaiya Alias Birmal Khelu Haswale** and even, they have helped him in purchasing a tempo. To prove this conspiracy, the prosecution relies upon the following materials:-

- (a) A statement of one **Aarif Ayyub Shaikh** (Page No.126) who is an owner of the Eicher tempo used in the commission of the offence. The Accused No.1 gave a dash to the motorcycle on which, both the deceased were travelling and according to the prosecution, this is not a plain incident of accident but fully planned murder. This **Aarif** was helped in transferring the tempo in the name of the **Accused No.1 – Bhaiya Haswale** and the loan installment was also cleared to Shreeram Finance.
- (b) There is a statement of one **Amol Dagadu Waghmode** (Page No.137) wherein all of them including the **Accused No.1 - Bhaiya** and **Accused No.2 – Rohit** discussed about the repayment of a loan and then, sale of tempo in the name of **Accused No.1 – Bhaiya**.

- (c) There is a statement of one **Ashok Dattatraya Gaikwad** (Page No.93) who had seen the accident on 14th July 2021 at about 10.30 p.m. It was on a road going from Mohol to Kurul. He saw, one Eicher tempo gave a dash to a motorcycle. As a result, the driver had fallen down and the pillion rider was caught in between the front wheels of the tempo.
- (d) There is a statement of one **Waseem Jahagirdar Talafdar** (Page No.108) who is an owner of the hotel Kaveri. All the Accused have assembled there on 14th July 2021. The **Accused No.1 – Bhaiya** also came along with his tempo and both the deceased on their motorcycle. They have consumed beer. After that, both the deceased went towards Mohol on their motorcycle and the **Accused No.1 – Bhaiya** followed them in his Eicher tempo.
- (e) There is also one statement of the waiter **Arjun Kondiba Kale**. (Page No.112).
- (f) There is statement of one **Rupesh Alias Kundan Hiralal Dhotre** (Page No.114) who is an owner of Diamond Red hotel. On 14th July 2021 at about 9.00 p.m., to 9.30 p.m., all the Accused have assembled there for a dinner and one **Suresh Kamble** telephoned the **Accused – Santosh Surwase** and informed him about the accident on Kurul road wherein **Satish** died on the spot and **Vijay** got seriously injured.
- (g) There is a statement of **Bhalchandra Kamble** and **Shekhar Bansode** dated 15th November 2021 (Along with Affidavit of Original Complainant). Their statements were recorded

by the Deputy Superintendent of Police. These statements pertain to hearing the conversation on 14th July 2021 at about 12.30 hours in the afternoon by **Bhalchandra Kamble** and **Shekhar Bansode** on 13th June 2021 near water pipeline. As per the statement of **Bhalchandra**, the present Appellant was saying to the Accused No.1 and gave instructions to him how to eliminate the **deceased Satish** and **Vijay** by calling them at Kaveri hotel and asking them to consume a liquor. He also assured the Accused No.1 to release him if caught by the Police. Whereas, in the statement by **Shekhar**, there is a reference of the talks in between the present Appellant and the **bailed out Accused – Aakash**. He has instructed **Aakash** to eliminate the deceased as early as possible.

8. Learned Senior Advocate Shri.Kulkarni has criticised the conduct of the Police in recording these statements belatedly and he invited my attention to the observations of the Division Bench in respect of those two statements. According to him, if these two statements are excluded, the remaining material is not sufficient to detain this Appellant behind bar. No doubt, the Division Bench in the order has pointed out the lacunae of delayed recording of these statements. It is there in Para Nos.11 and 12. There cannot be any dispute that these statements were not recorded when the first charge-sheet was filed. According to learned Advocate Ms.Pai, the Division

Bench has appreciated those statements considering the role of the **Accused Aaksh** and **Ramesh**. Whereas, according to her, even though there is a delay in those statements, there are specific references attributed to this Appellant.

9. No doubt, it is also true that the Hon'ble Supreme Court while granting bail to **co-accused Pintu Surwase** has considered all the statements. There is also observation that all the materials are falling short to show either conspiracy or an act of committing a murder.

10. There is an attempt made by learned Advocate Ms.Pai to point out to me the averments in the spot panchnama and in the memorandum of statement recorded of Accused No.1. It pertains to the details about the conspiracy. Even, at a bail stage, they cannot be considered. The issue before the Court, is whether the Appellant is entitled to bail. The trial Court has not granted bail to this Appellant. The issue before this Court is not whether these materials are sufficient to warrant a conviction. However, considered from all the angles, this Court feels that no case for bail is made out. The trial Court has rightly appreciated the materials. The role of **Accused – Pintu Surwase** and the **Accused – Santosh Surwase** are different. I say so, because, in the two motive suggested, there is a specific reference of this Appellant and in

those two statements, specific utterances are attributed to this Appellant. The Division Bench while granting bail to those two Accused have given a benefit of delayed recording but by considering the role of those two Appellants. Even though, there is a delayed recording against this Appellant, there is a specific reference of eliminating the deceased persons.

11. So, I do not think that the trial Court has committed an error. No case for bail is made out.

12. In view of the above discussion, the **Appeal stands rejected.**

[S. M. MODAK, J.]