

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1279 OF 2023

Mr. Santosh Janardhan Surwase
Age: 33 Years, Indian Inhabitant,
Residing at : Siddharth Nagar, Mohol,
Dist. Solapur. At present Solapur Jail.

...Appellant

vs.

1. The State of Maharashtra
Police Station
Vide CR No.640 of 2021.

2. Dadarao Narayan Shirsagar
Age – 32. Occ. Auto Ricksha Driver
Address- Siddharth Nagar, Mohol,
Solapur.

...Respondents

Ms. Sana Raees Khan i/b. Mr. Aditya Parmar, Mr. Abhijeet Singh and Ms. Sneha Mishra:	Advocate for Appellant.
Ms. Aruna Pai:	Advocate for Respondent No.2 - first informant.
Mr. H.J. Dedhia:	APP for State.

CORAM : S. M. MODAK, J.
DATE : 23rd APRIL 2024

P.C. :-

1. Heard learned Advocate Ms. Sana Raees Khan for the Appellant, learned Advocate Ms. Pai for the first informant and the APP. The

Appellant - Accused No.3 – Santosh is charge-sheeted for being conspirator for committing murder of two persons by name Satish Kshirsagar and Vijay Sarvade. The incident took place on 14th July 2021 at about 10.30 to 10.45 pm on a road going from the village Kurul village Mohol situated in front of water tank near Gurunath Mangal Karyalaya. Even though an attempt was made to show that both these deceased have died in regular accident but it was registered as an offence under Section 302 of the Indian Penal Code. It is on complaint of one Dadarao Narayan Kshirsagar who is brother of one of the deceased Satish. In fact, both the deceased were proceeding on motorcycle and the Accused No.1 who was driving Eicher Tempo gave a dash to that motorcycle from the backside and that is how, Satish succumbed to the injuries at the spot itself. Whereas, Vijay expired on 19th July 2021.

2. The incident was witnessed by one Vishveshwar Nagnath Vitekari. He runs a hotel near the spot and he heard a noise and then saw the incident. Whereas, the FIR is lodged by Dadarao on the basis of the information received about the incident. He was very much aware about the earlier incidents of giving of threats by accused Rohit

and according to him, there was rivalry in between the deceased Satish on one hand and accused Rohit on the other hand. He has narrated the previous incidents of threats and the kinds of motive also.

3. According to the prosecution, this Appellant along with others have conspired to eliminate both the deceased. There is also supplementary charge-sheet filed by the Police.

4. His Bail application was rejected by the Court of Additional Sessions Judge on 8th August 2023. Leaned Advocate Ms. Pai also read over the observations made in the said order. Learned Advocate Ms. Sana Khan prayed for bail on the following grounds:-

- a. The Division Bench of this Court has granted bail to co-accused Aakash @ Gotu Namdeo Barkade and Ramesh @ Gotu Sangam Sarvade on 20th September 2022.
- b. Even though this Court refused bail to co-accused Pintu Surwase, the Hon'ble Supreme Court has granted bail to him. A copy of the said order dated 4th April 2024 is placed on record.
- c. According to her, the material collected during the investigation is not sufficient to detain the Appellant who has already remained in jail for almost two years.
- d. The role alleged against the Appellant is not of actually

participating in the accident.

5. As against this, the learned Advocate Ms. Pai and learned APP opposed the bail on following grounds:-

- (a) The first informant in his FIR and other witnesses in their statements have disclosed about the previous incidents of rivalry and threats given by the accused persons including the present Appellant.
- (b) There is also NC registered against this Appellant arising out of one incident.
- (c) There are previous 7 offences registered against this Appellant at Mohol Police Station.

6. The Appellant is convicted for the offence under Section 498-A, 306 r/w 34 of the Indian Penal Code and his Appeal against conviction is pending before this Court. Copy of order dated 21st November 2007 passed in Criminal Application No.835 of 2007 is tendered by the learned Advocate Ms. Pai. Additional ground is taken and it is in respect of misuse of liberty of bail granted to co-accused Pintu and in fact, there is an FIR registered against the said Pintu and two others on the complaint of one Gautam Shirsagar who is brother of deceased. It is dated 18th April 2024 with Mohol Police Station under Sections 324,

323, 504, 506 r/w 34 of IPC.

7. By way of reply, Ms. Sana Khan contended that the entire incident reflected in the FIR is not true version whereas, Accused Pintu Surwase has also complained to local police station and higher police officials already vide complaint dated 18th April 2024. The incident is of 18th April 2024. Copy of that complaint and extract of NC registered under Sections 323, 504 and 506 r/w 34 of IPC is also tendered.

8. It is true that the Division Bench of this Court has granted bail to co-accused Nos.1 and 6 and the Hon'ble Supreme Court has granted bail to Accused Pintu. It is true that ultimately, the Court has to consider what are the materials placed against the Appellant. When I have perused the materials on that background, I found following are the materials relied upon by the prosecution:-

- (i) There was complaint of entering bogus name in the electoral list from Mohol Nagar Parishad which was protested by both the deceased Satish and Vijay and the Sub-Divisional Officer, Pandharpur has cancelled these bogus entries. As a result, Accused Rohit @

Anna Fadatare got annoyed and deceased Satish informed first informant that he was frightened by the accused including Santosh and threatened of dire consequences.

(ii) One incident of 31st December 2019 when the deceased Satish was also called and threatened by Accused Rohit and present Appellant and bullets were fired on the ground. (admittedly he has not lodged any police complaint and the brother of first informant gives an explanation about the fear).

(iii) There was Gharkul Yojana of the Government. It was sanctioned to deceased Satish and Vijay. However, the file was deliberately misplaced and when the deceased was protesting on 29th June 2021 he was threatened by Accused Anna Fadatare and present Appellant.

9. Above are the previous incidents and motive claimed by the prosecution. According to the learned Advocate for the Appellant, all these incidents are stale incidents and when these incidents took place there was no police complaint lodged and the allegations are

afterthought.

10. With the assistance of both of them, I have read the statements of following witnesses:-

- (a) Ashok Gaikwad dated 16th July 2021 (page 93). He had seen Santosh on 14th July 2021 at about 10.30 pm and he saw the dash given by Eicher Tempo to the motorcycle. Somehow, he could see registration number of the motorcycle. Subsequently, he got information about the names of the deceased and the involvement of the accused persons including the present Appellant.
- (b) The statement of one Vishweshwar Vitekari dated 20th July 2021 (page 106). He was present in and around the spot. He had seen dash given by Eicher Tempo to the motorcycle. Both the deceased Satish and Vijay used to visit his hotel for dinner.
- (c) Wasim Jahagirdar Talafdar dated 20th July 2021 (page 108). He also runs Hotel at Mohol Kurul Road. He has witnessed visit of both the deceased to his hotel on motorcycle and he has also witnessed taking of dinner by

Accused No.1 – Bhaiyya and both the deceased at his hotel just earlier to the incident. After dinner all of them have left the hotel.

- (d) The statement of one Rupesh @ Kundan Hiralal Dhotre dated 20th July 2021 (page 114) who runs hotel by name 'Diamond Red'. On 14th July 2021 Accused No.2 - Rohit Fadatre, Appellant - Santosh and two other persons came to his hotel for dinner. At about 11.00 pm, the present Appellant - Santosh received a phone call from one Suresh Kamble about the accident that took place on Kurul Road. After that, all the persons assembled there have left his hotel.
- (e) The statement of Vicky Chandrakant Kamble dated 20th July 2021 (page 116). He along with the present Appellant, his wife and Accused Pintu went to Civil Hospital, Solapur wherein deceased Vijay Sarvade was admitted. This statement is relied upon by the Appellant to buttress the submission that if the Appellant is a conspirator, why he should go to the Hospital?

- (f) The statement of Vishranta Kshirsagar dated 20th July 2021 (page 122). She is mother of the deceased Satish. She was aware that wife of Appellant - Santosh being vice President of Nagar Parishad and she was also aware about complaint lodged by the deceased – Satish about the bogus entries in electoral list.
- (g) The statement of one Aarif Ayyub Shaikh dated 4th August 2021 (page 126). He is owner of Eicher Tempo and due to financial difficulties he sold the tempo to Bhaiyya Haswale who is Accused No.1.
- (h) The statement of one Siddharth Ekmale dated 9th September 2021 (page 139). He has lodged NC complaint for the offences under Sections 506 r/w 34 with Mohol Police Station in respect of the incident dated 11th March 2021 against one Anna Fadatore and present Appellant. He has questioned the Appellant as to how they have entered bogus names in the electoral list.
- (i) The statement of one Bhalchandra Kamble dated 15th November 2021 (on page 6 of the additional compilation).

This was tendered before the trial Court after filing of the charge sheet and he was witness to the gathering of accused persons including Accused No.1, present Appellant and others on 14th July 2021 at about 12.30 hours in the afternoon. He has heard the utterance by the Accused No.2 – Rohit. He has said it to Accused No.1 – Bhaiyya. He has instructed Accused No.1 – Bhaiyya to invite both the deceased to Kaveri Hotel and he has asked Bhaiyya to bring beer also and after that Bhaiyya was asked to give a dash to both deceased on motorcycle with the help of Eicher tempo. There is a reference of present Appellant being present there, whereas, Appellant contents that he was simply present and statement does not denote any utterance by the Appellant.

- (j) There is statement of Shekhar Bansode dated 15th November 2021 (page 10) wherein the Appellant has also uttered Accused No.1 – Bhaiyya. The Appellant has expressed his anguish over both the deceased and he has expressed wish that both of them needs to be eliminated.

11. It is true that the Division Bench of this Court while granting bail to co-accused Nos.5 and 6 have observed about belated recording of the statements of Bhalchandra Kamble and Satish Bansode in paragraph Nos.11 and 12. It is also true that the Hon'ble Supreme Court while granting bail to Pintu also considered the materials alleged against Accused - Pintu and the Hon'ble Supreme Court observed in the judgment that there is no specific overt act either of conspiracy or committing crime.

12. As said above, the role alleged against the Appellant is that of a conspirator. It is true that the conspiracy is always hatched in secrecy and there is difficulty to collect the materials on the point of conspiracy.

13. The Court has to see whether the materials on the point of conspiracy whether they are sufficient to detain the Appellant behind bar till the conclusion of the trial. As said above, the circumstances alleged against the Appellant consists of the instances of motive, few threats given earlier to the incident and his presence as stated by the two witnesses – Bhalchandra Kamble and Satish Bansode.

14. My attention is also invited to memorandum statement of the co-accused Bhaiyya on 15th July 2021 (page 73). He has expressed readiness to show the place where he has parked his Eicher tempo. Though there is reference of few of the accused according to Appellant, he has not referred about involvement of this Appellant in the conspiracy. It is true that about the materials referred above, the Court is required to make certain observations for deciding the involvement.

15. The Court cannot shirk its responsibility from making certain *prima facie* observations about those materials. No doubt, it reveals that there was some dispute amongst the deceased on one hand and Accused No.2 – Rohit on the other hand. It is no doubt true that in that dispute there are allegations that the present Appellant had given support to Accused No.2 – Rohit. It is also true that there are materials pointed out to me which indicates registration of non-cognizable offence against this Appellant. Even the report given by the police also indicates that there are previous offences registered against him. No doubt, he is convicted in one of such offence but it is arising out of matrimonial relationship. The considerations for grant of bail are the likelihood of remaining present before the trial Court and possibility of

threat to prosecution witnesses. If the material is perused from this perspective, I am of this view that the Appellant deserves to be released on bail. I think all threat perspective can be considered while imposing the conditions but I do not think that on the basis of these materials his continued detention is warranted till trial is concluded. It is true that trial Court has referred to all these materials but trial Court has overlooked the fact that the materials needs to be assessed on the ground of sufficiency so as to warrant further detention. It has not to be assessed for proving the guilt. Learned trial Court has overlooked one fact about sufficiency of materials and possibility of misuse of bail. Possibility of misuse of bail can be avoided by imposing strict conditions. So subject to strict conditions, I am inclined to grant him bail. Above are *prima facie* observations. When trial Court need not be influenced by those observations. Hence, the order:-

ORDER

- (i) Appeal is allowed.
- (ii) Appellant - Santosh Janardhan Surwase arrested in connection with C.R. No.640 of 2021 registered with Mohol Police Station, Solapur (Rural) for the offences

punishable under Sections 302, 201, 120-B r/w 34 of IPC, be released on furnishing P.B. and S.B. of Rs.1,00,000/- (Rupees One Lakh Only).

- (iii) Appellant is directed not to enter the Solapur District till the conclusion of the trial.
- (iv) Appellant is directed to furnish his alternate place of residence to the Police and to the trial Court prior to his release on bail.
- (v) Appellant is directed to give attendance to the nearest Police Station of his residence on 1st Monday from 10.00 am to 12.00 noon of every month.
- (vi) Appellant not to threaten the prosecution witnesses.
- (vii) If Appellant breaches any of the conditions, the prosecution is at liberty to apply for cancellation of bail.
- (viii) Criminal Appeal is disposed of accordingly.

[S. M. MODAK, J.]