

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.168 OF 2024

Hemant Kailash Kate

...Appellant

V/s.

The State of Maharashtra and Anr.

...Respondents

Mr. Niranjan Mundargi *with Ms Keral Mehta for the Appellant.*
Ms Shilpa K. Gajare-Dhumal, *APP for Respondent No.1-State.*
Mr. Anil S. Kamble *for Respondent No.2.*
Mr. G. S. Dhage, *PSI, Sangvi Police Station, Pune.*

CORAM : SANDEEP V. MARNE, J.

Dated : 21 August 2024.

P.C.

1) This is an Appeal under the provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, (**SCST Act**) challenging the order dated 31 January 2024 passed by the learned Special Judge, Pune, in Special Case (Bail Application) No.453 of 2020. The application was filed by the Appellant seeking bail in connection with C.R. No.306 of 2020 registered with Sangvi Police Station for offences punishable under Sections 302, 143, 147, 148, 149 of the IPC and Sections 3(1)(r)(s), 3(2)(va), 3(2)(v) of the SCST Act and Sections 37(1) and 135 of the Bombay Police Act.

2) The prosecution story is that the accused assaulted the deceased-Viraj Jagtap on 7 June 2020. That the accused-Kailas Kate informed the first Informant-Jitesh V. Jagtap via telephonic call at 10.06 p.m. that the accused had assaulted the deceased -Viraj Jagtap

and that the first Informant should take him away. Accordingly, the first Informant visited the spot at which the assault was committed along with deceased's mother, first Informant's cousins and neighbours. He found Viraj Jagtap lying on the steps of Shiv Bakery. He had suffered injury on his head and his trouser was stained with blood. That Viraj Jagtap made a declaration to the first Informant that while he was travelling on two-wheeler, he was dashed by a small tempo and he fell down. Accused-Hemant Kailas Kate, Harshad Kailas Kate, Sagar Jagdish Kate, Rohit Jagdish Kate, Kailas Murlidhar Kate, and Jagdish Murlidhar Kate alighted from the tempo with rods and stones in their hands and that Viraj attempted to flee the spot but the accused chased him and while running, he fell down and accused Hemant Kate gave a blow on his head with iron rod. Thereafter accused-Sagar Kate hit Viraj with a stone on his back and Rohit Kate, Harshad Kate, Kailas Kate and Jagdish Kate held his hands and legs and Hemant Kate kept on assaulting him with rod. The injured was taken to Aditya Birla Hospital, Thergaon and he was declared dead on 8 June 2020. According to prosecution, the incident was witnessed by eye witnesses -Abhishek Vijay Hande and Anant Tryambak Dongre. The Appellant was arrested on 8 June 2020, and he continues to be in custody since then.

3) The Application filed by the Appellant for bail has been rejected by the learned Special Judge by order dated 31 January 2024.

4) I have heard Mr. Mundargi, the learned counsel appearing for the Appellant, who would highlight inconsistencies in the alleged dying declaration made to first informant-Jitesh Jagtap as compared to the statements of the eye witnesses-Abhishek Vijay Hande and Anant Tryambak Dongre. Inviting my attention to the *postmortem*

report, Mr. Mundargi would submit that the same reflects only singular injury on head. That the said injury cannot be attributable only to the Appellant in view of statements of Abhishek Vijay Hande and Anant Tryambak Dongre, in which blows on head are clearly ascribed to accused- Sagar Kate. Mr. Mundargi would submit that out of the total six accused, two were juveniles, whereas out of the four arrested accused, three have been released on bail by this Court. In this connection, he would rely upon judgment and order dated 28 September 2021 passed by Division Bench of this Court releasing Jagdish Kate and Kailas Kate on bail. So far as Sagar is concerned, Mr. Mundargi would rely upon order dated 23 August 2023 passed by the Division Bench releasing him on bail. He would submit that considering the role ascribed to accused Sagar Kate in the statement of the eyewitnesses, Abhishek Vijay Hande and Anant Tryambak Dongre, Appellant deserves to be released on bail on principle of parity.

5) The appeal is opposed by Mr. Kamble, the learned counsel appearing for Respondent No.2. He would submit that case involves serious offences including offence under Section 302 of the IPC. That all the ingredients of motive, planning, preparation and execution are fulfilled. That this is a clear case of honor killing. That heinous crime has been committed by the accused in which Appellant has played major role of assault. That deceased Viraj Jagtap has been murdered for his courtship with the daughter of the accused-Jagdish Kate. He would submit that there is no parity between the Appellant and the other accused. He would pray for rejection of the appeal.

6) Ms Gajare-Dhumal, the learned APP would oppose the appeal submitting that the Appellant has played major role in

commission of the crime and death of the deceased is fully and completely attributable to the conduct of the Appellant alone. She would submit that there is specific allegation of Appellant repeatedly hitting the deceased on his head with iron rod. That such blows were given on the head with full knowledge as well as intention of killing him. She would invite my attention to the injury certificate, which according to her, clearly indicates presence of multiple injuries as well as multiple hemorrhagic conclusions and therefore Appellant cannot seek any benefit of alleged inconsistency when all witnesses are *ad idem* that Appellant gave blows with iron rod on the head of the deceased. She would submit that no parity can be established between the role played by Appellant and the other accused, who are released on bail. She would pray for dismissal of the Appeal.

7) Having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that the case of the prosecution is mainly premised on the alleged dying declaration given by the deceased to first informant-Jitesh Jagtap as well as statements of the eyewitnesses in whose presence the alleged crime was committed. From statements on record there appears to be presence of motive, preparation, planning and execution. Though the prosecution is relying on the alleged dying declaration made by the deceased to the first informant-Jitesh Jagtap, the version in the dying declaration does not seem to match with the version of the two eyewitnesses-Abhishek Vijay Hande and Anant Tryambak Dongre. Appellant is sought to be ascribed the main role in killing the deceased on account of blows given by him on his head with iron rod. The statement of the first informant reflects that the deceased informed him that the blow with iron rod was first given by Appellant-Hemant Kate and thereafter Sagar Kate hit the deceased with stone

in his back. As against the said version of the first informant, the eyewitness Abhishek Vijay Hande states in his statement that accused-Sagar Kate first assaulted the deceased on his head with iron rod like object and the Appellant-Hemant Kate took the iron rod from Sagar Kate and started assaulting the deceased. In the said statement of Abhishek, the exact part of the body on which the Appellant assaulted the deceased is not indicated. However, so far as accused - Sagar Kate Kate is concerned, said witness appears emphatic about Sagar Kate was hitting the deceased with iron rod on his head. Thus, according to witness- Abhishek Hande, it was accused- Sagar Kate, who was initially assaulting the deceased on head with iron rod and assault by Appellant followed subsequently. This version does not match with the version of the first informant, in which it is claimed that Appellant started assaulting the deceased at the first instance and the role of Sagar was followed subsequently. Same is the position in respect of statement of witness-Anant Tryambak Dongre, which again reflects giving blow by iron rod by one of the accused and Appellant -Hemant Kate taking the iron rod from that person and giving a blow on deceased's head. Thus, there appear to be clear inconsistencies between the statements of the first informant and the two alleged eyewitnesses with regard to exact role played by the Appellant.

8) The above inconsistencies are taken note of by this Court while granting bail to accused -Jagdish Kate and Kailash Kate vide judgment dated 28 September 2021. More importantly, while deciding the appeal filed by accused Sagar Kate, the Division Bench of this Court has once again considered the inconsistencies in the statements of first informant and the two alleged eyewitnesses. The Division

Bench granted bail to accused-Sagar Kate by order dated 23 August 2023.

9) If the role of accused-Sagar Kate is taken into consideration, it appears that the two eyewitnesses -Abhishek Hande and Anant Dongre have clearly identified his role in hitting the deceased with iron rod at the first instance. In my view, therefore there appears to be some parity between the role ascribed to Appellant and Sagar Kate. Since accused-Sagar Kate is released on bail, in my view Appellant also deserves to be enlarged on bail on the principle of parity. It must also be noted that the Appellant has been in custody for the last more than four years. The trial is not likely to be concluded in immediate near future. In that view, the appeal deserves to be allowed and I proceed to pass the following order:

- (a) The appeal is allowed and the impugned order dated 31 January 2024 passed by the learned Special Judge, Pune in Special Case (Bail Application) No. 453/2020 is set-aside;
- (b) The appellant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (c) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (d) The appellant shall not enter the jurisdiction of Sangvi Police Station, Pune, for a period of one year from the date of his release;
- (e) The appellant shall not leave India, without the prior permission of the trial Court;

- (f) The 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 Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (g) The appellant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;
- (h) The appellant shall file an undertaking with regard to clauses (c) to (g) in the trial Court, within two weeks of his release;
- (i) If there are two consecutive defaults either in attending the Police Station or if the appellant fails to appear before the trial Court, or there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the appellant's bail.

10) With the above directions, the appeal is allowed and disposed of. It is however, clarified that the observations made in the order 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 the order.

[SANDEEP V. MARNE, J.]