

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.186 OF 2024

Vijay Baban Kedar

....Appellant

V/s.

The State of Maharashtra and Anr.

...Respondents

Mr. Harshad V. Nimbalkar, *Senior Advocate with Mr. Sajid Mahat, Mr. Abhijit U. Arote and Mr. Satyam H. Nimbalkar i/b. Mr. Shailesh Kharat for t Appellant.*

Mr. Hiten Venegaonkar, *Government Pleader and Public Prosecutor with Ms. Shilpa G. Talhar, APP for Respondent No.1-State.*

Mr. Rajiv Chavan, *Senior Advocate with Mr. Rohan Hogle for Respondent No.2.*

Mr. Mane, API, and Mr. Pandhar, PC, Pandharpur, Sangola Police Station, present.

CORAM : SANDEEP V. MARNE, J.

Order reserved on : 15 October 2024.

Order pronounced on : 17 October 2024.

Order:

1) The Appellant has filed this Appeal under the provisions of Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SCST Act**) challenging order dated 12 January 2024 passed by the learned Special Judge (Atrocities Act) Pandharpur, rejecting the application filed by him seeking bail under provisions of Section 439 of the Code of Criminal Procedure, 1973, in connection with Crime Register No. 683 of 2023 registered with Sangola Police Station, District-Solapur, for the offences punishable

under Sections 302 and 201 r/w 34 of the IPC and Sections 3(2)(v) of the SCST Act.

2) The Appellant is arraigned as accused No.2 in the Final Report dated 10 November 2023 filed in connection with death of Suraj Vishnu Chandanshive. Appellant is the cousin brother of accused No.1-Sunil Madhukar Kedar.

3) The prosecution story, in brief, is that the deceased-Suraj Chandanshive was recruited on the post of Police Sub-Inspector in the year 2009 and was posted at various places such as Nanded, Latur and Sangli. His last posting was as Assistant Police Inspector in Sangli District, where he was placed under suspension on account of his involvement in a criminal case, in which he was arrested. While he was in custody at Kolhapur jail, accused No.1-Sunil Kedar used to visit Suraj Chandanshive and he helped him financially. It is sought to be alleged that deceased-Suraj Chandanshive owed money to accused No.1-Sunil Kedar and statements of various witnesses are sought to be relied upon to suggest that accused No.1-Sunil Kedar was constantly demanding refund of amounts from deceased-Suraj Chandanshive.

4) In the above background, dead body of Suraj Vishnu Chandanshive was discovered at 4.30 a.m. on 3 August 2023 in the sugarcane field. The Appellant was arrested on 18 August 2023 and is in custody since then. On the same day accused No.1-Sunil Madhukar Kedar is also arrested. It is sought to be alleged by the prosecution that both the accused have killed Suraj Chandanshive on account of Suraj's failure to refund the amount to accused No.1-Sunil. In addition to IPC offences under Sections 302, 201 and 34, since the deceased belonged to scheduled caste community, offence under the provisions of Section 3(2)

(v) of the SCST Act is also added and therefore the case is being tried by the learned Special Judge established under the SCST Act.

5) Appellant filed application under Section 439 of the Code for release on bail, which has been rejected by the learned Special Judge by order dated 12 January 2024, which is subject matter of challenge in the present appeal.

6) Mr. Nimbalkar, the learned Senior Advocate appearing for the Appellant has canvassed following submissions in support of his plea for release of the Appellant on bail:

- (i) That the main accusations are against accused No.1-Sunil Kedar and Appellant is unnecessarily implicated in the case, in absence of any circumstances against him.
- (ii) That Appellant had no possible motive for commission of crime, deceased did not owe any money to Appellant and that the entire motive, if any, for allegedly killing the deceased is solely attributable to accused No.1-Sunil Kedar alone.
- (iii) That the entire case is sought to be built on circumstantial evidence and there are no circumstances to point involvement of Appellant in the crime.
- (iv) That only two circumstances are sought to be alleged against the Appellant for his implication in the crime. The first circumstance being the statement of wife of the deceased about Appellant sending derogatory and threatening Whatsapp messages to her from mobile phone No.7039400726, which does not belong to Appellant. That investigation has revealed that said mobile connection is in the name of an altogether different person.

- (v) That the second circumstance of statements of two witnesses- Pramod Kedar and Sachin Mahankal are sought to be relied upon to suggest presence of the Appellant in the car of accused No.1-Sunil Kedar. However, time of such presence is indicated in the said statements as during 12 am to 3.00 a.m. on 3 August 2023, whereas the assault was allegedly committed at 9.43 p.m. on 2 August 2023. That therefore even if the statement of Pramod Kedar and Sachin Mahankal are to be believed, the same do not prove Appellant's presence in company of accused No.1-Sunil Kedar at the time of commission of crime.
- (vi) Except the above two circumstances, there is absolutely no material on record to suggest even remote involvement of the Appellant in commission of the crime.
- (vii) Mere making of telephonic calls between two accused is not sufficient to infer Appellant's association with accused No.1 in commission of the crime. Both being cousins, were bound to interact with each other in ordinary course of things.
- (viii) That GPS data sought to be relied upon by prosecution can, at the highest, prove presence of vehicle of accused No.1-Sunil Kedar either near the house of deceased or at the spot of commission of crime. That there is no material to indicate that the Appellant was present in the said vehicle at the relevant time.
- (ix) That in fact, the statement of witness- Laxman Namdev Aivale shows that accused No.1-Sunil Kedar was alone till 8.30 p.m. on 2 August 2023. Therefore, there is no material to indicate that the Appellant could be in company of Sunil Kedar at 9.40 p.m. when the assault was allegedly committed.

- (x) That Appellant has no connection with the alleged recovery of blood-stained torch, which is recovered from the house of accused No.1.
- (xi) The vehicle allegedly used in crime also belongs to accused No.1-Sunil Kedar.
- (xii) Mere presence of antecedents against Appellant cannot be a reason *ipso facto* for rejection of bail and in support, he would rely upon judgment of the Supreme Court in ***Prabhakar Tewari V/s State of U.P.***¹
- (xiii) That despite lack of any circumstances showing involvement of the Appellant in commission of crime, he has still spent one year and two months in incarceration and he deserves to be granted bail in the light of non-availability of any material to suggest even remote involvement in commission of the crime.

On the above broad submissions, Mr. Nimbalkar would pray for release of Appellant on bail.

7) The appeal is opposed by Mr. Venegaonkar, the learned Public Prosecutor on following submissions:

- (i) There is recovery of blood-stained torch as well as presence of blood stains on doors of the car.
- (ii) FSL and DNA reports conclusively establish that blood stains found on the torch and the car are of deceased-Suraj Chandanshive.
- (iii) The Appellant was seen travelling in the car used in commission of crime by atleast two witnesses.

¹ AIR ONLINE 2020 SC 96

- (iv) That there is clear presence of motive for commission of crime by the Appellant.
- (v) Statements of various witnesses show threats issued by the Appellant while demanding money.
- (vi) That therefore the Appellant's involvement in demanding money from deceased-Suraj Chandanshive gets clearly established.
- (vii) That the prosecution has collected Global Positioning System (GPS) data in respect of the car which shows presence of the car near house of the deceased at around 8.30 p.m. and the car being stopped at the spot of discovery of dead body for few minutes.
- (viii) That statement of Anant M. Kulkarni, Police Inspector, Sangola Police Station clearly indicates that mobile phone No. 7039400726 when dialed, was answered by the Appellant. That the very same mobile number was used for sending derogatory and threatening messages by the Appellant to the wife of the deceased.
- (ix) That there are 8 serious antecedents against the Appellant, who appears to be a seasoned criminal.

Mr. Venegaonkar would accordingly pray for dismissal of the Appeal.

8) The Appeal is also opposed by Mr. Chavan, the learned Senior Advocate, appearing for Respondent No.2-First Informant- Sourabh Bharat Chandanshive, who is cousin brother of deceased-Suraj Chandanshive by canvassing following submissions:

- (i) That statement of witness-Ajay V. Godse clearly reflects that accused No.1-Sunil Kedar repeatedly demanded money from deceased-Suraj Chandanshivem who was apprehensive of Sunil's revengeful attitude.

- (ii) That statement of witness-Desh Dnyanu Aivale clearly indicates apprehension expressed by deceased Suraj Chandanshive about Sunil killing him over repayment of Rs. 50,00,000/-
- (iii) That statement of witness -Ganesh Annaraia Metkari, Police Naik also indicates that Mobile phone number 7039400726 was being used by Appellant-Vijay Kedar, who had sent threatening messages to the wife of the deceased.
- (iv) Appellant's involvement in the crime is writ large on the basis of material collected by prosecution.
- (v) That presence of serious antecedents against Appellant is a relevant factor to be considered while deciding application for bail as held by the Apex Court in ***Harjit Singh V/s. Inderpreet Singh alias Inder and Another.***²

Mr. Chavan would accordingly pray for dismissal of the appeal.

9) I have considered the submissions canvassed by the learned counsel appearing for the parties and have perused the records of the case and have gone through the findings recorded by the learned Judge while passing the impugned order.

10) The case is sought to be built by prosecution on circumstantial evidence in the light of absence of any direct evidence against both the accused. It is sought to be suggested by Mr. Nimbalkar that entire case is mainly built by the prosecution against accused No.1-Sunil Kedar and that the Appellant is unnecessarily implicated in the present case only on account of two circumstances viz. (i) wife of the deceased giving supplementary statement of Appellant sending threatening messages to her and (ii) presence of Appellant being noticed in the car of accused No.1 between 12.00 a.m. to 3.00 a.m. According to Mr. Nimbalkar

². (2021) 19 SCC 355

except these two circumstances, there is absolutely nothing on record to indicate even remote involvement of the Appellant in commission of the crime. However, though it is sought to be suggested that there is absence of any material to link Appellant to the threatening messages sent to the wife of the deceased from mobile phone No. 7039400726, which is found to be registered in the name of an altogether different person, there are at least two statements on record of Anant Kulkarni, Police Inspector and Ganesh Annarai Metkari, Police Naik, who have clearly stated that while investigating another crime, when the said mobile phone No. 7039400726 was dialed, the call was answered by Appellant-Vijay Kedar. *Prima facie* there is material to indicate that the said mobile phone No. 7039400726 was actually being used by Appellant. In the supplementary statement of the wife of the deceased-Manisha Suraj Chandanshive, it is stated that on 9 June 2023 (two months before the incident) Appellant had sent several Whatsapp messages to her. The said statement indicates that the Appellant had abused Manisha and in the same telephonic conversation accused No.1-Sunil Kedar later demanded money from Manisha. The statement indicates that both the accused were together demanding money from Manisha. It therefore, becomes difficult to completely disbelieve the prosecution story at this juncture that Appellant had absolutely no connection in demanding money from deceased -Suraj Chandanshive.

11) There is *prima facie* material to suggest that mobile phone No. 7039400726 was being used by the Appellant and he has sent Whatsapp messages to Manisha Chandanshive from the said phone number. Though it is sought to be suggested by Mr. Nimbalkar that initial statement of Manisha Chandanshive recorded on 7 August 2023 was silent about Whatsapp conversation or threatening messages by the Appellant and that there is subsequent improvement in the supplementary statement recorded on 18 July 2023, it is not possible at

this juncture to completely discard the said statement of Manisha Chandanshive in the light of the fact that the mobile number in her statement tallies with the mobile phone number being used by Appellant at the relevant time.

12) Since Manisha has given statement of Appellant and Accused No. 1 together abusing and demanding money from her, it cannot be said at this juncture that there is total absence of motive for Appellant to kill the deceased.

13) Statements of witnesses-Pramod Balaso Kedar and Sachin Gorakh Mahankal clearly indicate that both the accused were in company with each other in the car involved in the commission of the crime from 12.00 a.m. till 3.00 a.m on 3 August 2023. In fact, both the witnesses Pramod Kedar and Sachin Mahankal have travelled alongwith accused Nos.1 and 2 between 12.00 a.m. to 3.00 a.m. The assault is allegedly committed at 9.43 pm on 2 August 2023. It appears that car used in the crime had GPS device and the police have collected GPS data, which shows presence of the car few meters from the spot at which dead body of the deceased is recovered. The GPS data also shows presence of the said car near house of the deceased at 8.30 p.m. i.e. one hour before commission of assault. Though it is sought to be contended by Mr. Nimbalkar that there is no material on record to indicate Appellant's presence in the car or in the company of accused No.1 at the time of commission of alleged assault at 9.43 p.m. on 2 August 2023, circumstantial material available on record does indicate that both the accused were in company of each other at proximate time of commission of the crime.

14) Thus, twin factors of Appellant associating himself with demanding money and threatening the wife of deceased for recovery of

money of accused No.1-Sunil Kedar together with Appellant being seen in company of accused No.1 in the car used for commission of the crime lead to credence to possible involvement of Appellant in commission of crime. The car in which Appellant was found in the company of accused No.1 is stained with the blood of the deceased. The time gap between commission of assault (9.43 p.m.) and two witnesses noticing presence of Appellant in the car (12 a.m.) is not too wide (2 hours 17 minutes). If the assault was committed at 9.43 p.m. it must have taken some more time for disposal of the body. There is allegation of use of car of accused No. 1 in commission of crime, possibly for disposing off the dead body, which is a reason why blood stains of deceased are found in the car. Considering these factors, the time gap would further be narrowed and presence of Appellant in the car of accused No. 1 at 12 a.m. creates grave suspicion of his involvement in the crime. It therefore becomes difficult to believe at this juncture that accused No.1 committed the crime alone and Appellant innocently joined him in the car at 12.00 a.m.

15) Considering the above position, in my view there is sufficient material to indicate possible involvement of the Appellant in commission of crime.

16) Appellant has eight antecedents against him. Details of 8 antecedents against the Appellant would indicate that Appellant is involved in 8 different crimes during the years 2017 to 2020. Being a history sheeter, it would be too dangerous to release him on bail. Appellant after all is a cousin of accused No.1 and has associated himself in recovery of alleged money from deceased. In that view of the matter, possibility of Appellant threatening the witnesses associated with the case and tampering with the evidence cannot be ruled out.

17) Reliance by Mr. Nimbalkar on judgment of the Apex Court in ***Prabhakar Tewari*** (supra) does not cut any ice. The judgment cannot be cited in support of an absolute proposition of law that in every case, presence of antecedents against accused are required to be ignored while considering the release on bail. On the contrary, reliance by Mr. Chavan on judgment of the Apex Court in ***Harjit Singh*** (supra) appears to be apposite. The Apex Court has held that while granting bail, reasonable apprehension of the witnesses being tampered with or apprehension of giving of threats should always weigh with Courts. Therefore, character, behaviour, means, position and standing of the accused is a relevant factor to be considered by the Court while deciding the application for bail. In the light of this position, presence of as many as 8 antecedents against the Appellant would clearly go against him while considering application for bail.

18) The Appellant is involved in commission of serious crime in association with accused No.1. He has been arrested on 18 August 2023 and this is not a case of long incarceration in custody. In that view of the matter, this is not a fit case for release of the Appellant on bail. Consequently, I do not find any reason to interfere in the impugned order passed by the learned Special Judge.

19) Criminal Appeal, being devoid of merits, is accordingly **dismissed**. The Appellant shall however be at liberty to apply for bail afresh before the learned Special Judge, in the event there is no substantial progress in the trial for the next one-year, which application shall be decided on its own merits. This liberty shall not be construed to mean as if this Court has prescribed any time limit for conclusion of the trial. The observations made in the order are *prima facie* and are made only for examining Appellant's entitlement for bail

and the Trial Court shall not be influenced by the same while deciding the case finally.

[SANDEEP V. MARNE, J.]