

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 484 OF 2024****Rahul @ Shambhu Shivaji Kshirsagar****....Appellant****V/s****State of Maharashtra and Anr.****....Respondents****WITH****CRIMINAL APPEAL NO. 560 OF 2024****Atul Satish Kshirsagar****....Appellant****V/s****State of Maharashtra and Anr.****....Respondents**

Mr. Shailesh D. Chavan, *for the Appellant in Appeal No. 484 of 2024.*

Mr. Shrikant H. Panhale, *for the Appellant in Appeal No. 560 of 2024.*

Ms. Anuja S. Gotad, *APP for Respondent-State.*

Mr. Vikrant Shinde, *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.

Date : 18 OCTOBER 2024.

P.C. :

1) These appeals are filed under the provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCST Act) challenging order the dated 21 October 2022 passed by the Additional Sessions Judge, Satara, rejecting the Applications preferred by the Appellants for grant of bail under provisions of Section 439

of the Code of Criminal Procedure, 1973 in connection with C.R. No.153 of 2018 registered at Wai Police Station, for the offences punishable under Sections 120B, 302 and 427 r/w. 34 of the Indian Penal Code (IPC) and Sections 3 (2)(v), 3(2)(v)(a) and (6) of the SCST Act.

2) I have heard Mr. Chavan, the learned counsel appearing for Appellant in Appeal No. 484 of 2024 and Mr. Panhale, the learned counsel appearing for Appellant in Appeal No. 560 of 2024 and Ms. Gotad, the learned APP for Respondent No.1 – State. The appeals are opposed by Mr. Shinde Respondent No.2- Complainant.

3) The Appellants have been arrested 4 June 2018 and are in custody for over 6 years by now. It appears that by the impugned order dated 21 October 2022, the learned Special Judge had allowed applications for bail of Accused No. 1 – Nikhil Sudam Malekar and Accused No.2 - Diksha Anand Kamble whereas the Bail Applications preferred by the rest of the Accused (including Appellants) were rejected. It appears that Accused Nos.6 & 7 (Digambar Bandu Dhoke and Ketan Sunil Sawan) preferred Criminal Appeal No.1214 of 2022 before this Court challenging the order dated 21 October 2022. This Court disposed of Criminal Appeal No.1214 of 2022 permitting the Appellants therein to withdraw the Appeal with liberty to file fresh application for bail before the Trial Court if the trial was not to be concluded within a period of six months. This Court passed following order on 16 February 2023 in Criminal Appeal No.1214 of 2022:-

“1. After hearing the learned Senior Advocate for the Appellant at length, when this Court was not inclined to grant relief of bail, learned Senior Advocate on instructions, seeks leave to withdraw present Appeal with liberty to file a fresh application for bail before the trial Court, if the trial pertaining to Special (Atrocity) Case No. 22 of 2018 pending on the file of learned Additional Sessions Judge, Satara does not conclude within a period of six months from today.

Leave and liberty granted.

2. Appeal is dismissed as withdrawn with aforesaid liberty.

3. Upon a query raised by this Court, the learned APP on instructions from Dr. Sheetal Janare SDPO Wai, District Satara submitted that, as of today 11 witnesses have been examined in the present case and the prosecution intends to examine 16 more witnesses in support of its case. The said statement is accepted.

4. In view thereof, the learned Additional Sessions Judge, Satara seized of Special (Atrocity) Case No. 22 of 2018 is directed to expedite hearing of the said case and to make an endeavour to conclude the same within a period of six months from today.

This direction is issued in view of the fact that, the Appellant before this Court is behind the bars for last four and half years.

5. Registrar (Judicial-II) is directed to communicate the present Order to the Additional Sessions Judge/Sessions Court Wai, District Satara for information and necessary action.

6. It is needless to mention that, the learned Additional Sessions Judge, Satara conducting trial of Special (Atrocity) Case No. 22 of 2018 will not get influenced by the fact of withdrawal of the present Appeal by the Appellant so also earlier rejection of bail by the same Court, at the time of deciding fresh application of bail if preferred by the Appellant”.

4) It appears that in pursuance of the liberty granted by Division Bench of this Court by order dated 16 February 2023 Accused No. 6 (Digambar Bandu Dhoke) and Accused No. 7 (Ketan Sunil Sawan) filed fresh applications for bail before the learned Special Judge. By separate orders passed on 27 September 2024, the learned Special Judge has allowed the applications filed by Accused Nos. 6 and 7 and has released them on bail. Copies of order dated 27 September 2024 passed in the case of Accused Nos.6 and 7 are placed before me. After considering the entire circumstances of the case, the learned

Judge has made following observations in paragraph Nos. 9 to 13 of the order which read thus :-

“09. At the outset, let me make it clear that I will not touch the merits of the case. I say so because, till date, in all 20 witnesses have been examined. If I dealt with the evidence on record and its merits, then it would be detrimental to the trial.

10. In the present case, the present Appellant came to be arrested on 24th July 2018. Charges came to be framed on 20 July 2019. Thereafter on 13.12.2021, the testimony of the first witness was recorded. In the meantime, accused nos. 1 & 2, who allegedly hatched the conspiracy to commit a murder of the victim, came to be released by a learned predecessor. The present Appellant preferred a bail application before this court which came to be rejected. Thereon the present Appellant and other co-accused approached the Hon'ble High Court. They preferred criminal appeal no. 1214 of 2022. The learned APP on instructions from SDPO, Wai has submitted that till 16.02.2023, the prosecution has examined 11 witnesses and intends to examine 16 more witnesses. The Hon'ble Division Bench of Bombay High Court then accepted the statement made by learned APP and thereafter ordered an expedited hearing of the case and ordered to conclude the same within a period of six months. Accordingly, with the above mentioned order the Criminal Appeal No. 1214 of 2022 came to be disposed of on 16th February 2023.

11. Since then the prosecution has managed to examine in all 20 witnesses. The period of six months has already lapsed in the month of August 2023. This means that in these 19 months, the prosecution has examined only 9 witnesses. It is pertinent to note that the testimony of PW-21 began to be recorded on 28th March 2024. On the same day, the prosecution submitted a list of 20 more witnesses to be examined vide Exh. 345. In the said application, the prosecution has stated that the said list of witnesses is provisional and names of more witnesses may be included in the list of witnesses and more witnesses should be allowed to be examined. Therefore, from this approach of the prosecution, it reveals that the prosecution itself is not sure as to how many witnesses the prosecution is going to examine. It is pertinent to note that the prosecution is not acting according to its submission before the Hon'ble High Court. More importantly, if the list of additional witnesses given by the prosecution is provisional, then it is not clear as to how many more witnesses the prosecution is going to examine. Despite directions to expedite the trial, the prosecution took 5 years to examine 20 witnesses. Then it can easily take at least 3 to 4 more years to examine the remaining 20 witnesses.

12. Therefore, it is clear at this point that despite the directions, the prosecution has not conducted the trial expeditiously.

13. It is also important to mention here that my learned predecessor (Shri. S. G. Nandimath, District Judge & Addl. Sessions Judge, Wai) was retired in the month of June 2024. Since then there is no permanent appointment of any Presiding Officer in this court. Presiding Officer from Satara (HQ) is on deputation for this court for two alternate weeks in a month. Perusal of Roznama of the trial shows that the time was also spent due to absence of the Presiding Officer, sometime taken by the prosecution and certain time also consumed in hearing of the applications filed by the accused time to time. Therefore, these situations are also responsible for delaying the trial”.

5) The learned Judge has summarised the position of the case in paragraph No.22 of the order which reads thus:-

- “a) The present Appellant came to be arrested on 24th July 2018 and he has been in custody for more than 6 years.
- b) The trial has commenced and till date 20 witnesses had been examined.
- c) The trial has already expedited by the Hon'ble High Court. As such the trial was supposed to be concluded by the end of August 2023.
- d) The prosecution has given a new list of witnesses and wants to examine 20 more witnesses.
- e) There was nothing on record to indicate that the accused had threatened the witnesses & the complainant.
- f) Two co-accused have already been released on bail.
- g) Till date there is no complainant of interference by the accused”.

6) Thus, on account of liberty secured by Accused Nos.6 and 7 to file fresh applications for bail before the learned Judge, they have been released on bail by the learned Special Judge essentially on the ground that they were in custody for more than 6 years and there is no substantial progress in the trial. The learned Judge has particularly noted the fact that the prosecution itself is not sure about the exact number of witnesses that it intends to examine. The learned Judge has

observed that only 20 witnesses were examined by the time order dated 27 September 2024 was passed. The learned Judge has further recorded that on 28 March 2024 the prosecution submitted list of 20 more witnesses to examine. In addition to the list of said 20 witnesses, the prosecution made a vague statement that the said list was provisional and that the names of more witnesses could be included in the said list. On these broad factors, the learned Judge has proceeded to release Accused Nos.6 and 7 on bail.

7) Mr. Shinde would complain that the accused are responsible for delay in the trial and that though the learned Judge is conducting the trial on day-to-day basis, they are deliberately delaying the trial by seeking adjournments on one pretext or the other. He would further submit that several prosecution witnesses have turned hostile and he would attribute their hostility to bail granted to the accused.

8) In my view, the learned Judge who granted bail in favour of Accused Nos.6 and 7 is aware of the exact circumstances why the trial has not progressed. No finding is recorded in the orders dated 27 September 2024 that any of the Accused were responsible for delaying the trial. On the contrary, the findings recorded in the orders dated 27 September 2024 would indicate that the prosecution appears to be responsible for delay in the trial as the prosecution itself is not sure about the exact number of witnesses that it intends to examine. These findings are not recorded to blame any particular side for the delay in

completion of the Trial. The findings are recorded only for the purpose of examining entitlement of the Appellants for being released on bail.

9) If Appellants were also to secure similar liberty from this Court along with Accused Nos.6 and 7 and if they had filed fresh applications for bail before the learned Judge, I am sure, the learned Judge would have released even the present Appellants on bail on par with Accused Nos.6 and 7. There is no dispute to the position that the role that is sought to be ascribed to the present Appellants is on par with the role ascribed to Accused Nos.6 and 7.

10) In that view of the matter, I do not see any reason why the Appellants need to be further incarcerated when similarly placed Accused Nos.6 and 7 have already been released on bail. Also of relevance is the fact that when the learned Special Judge released Accused Nos.1 & 2 on bail by order dated 21 October 2022, an unsuccessful attempt was made by Respondent No.2 - Complainant to challenge the said order before this Court by filing Criminal Appeal No. 1248 of 2022. This Court however has rejected the said Criminal Appeal.

11) Considering the facts and circumstances of the present case, I am of the view that, the Appellants cannot be continued in incarceration any further. They have already spent more than 6 years and 4 months in custody. There is no possibility of the trial being concluded in immediate near future. Therefore,

on the principle of parity, the Appellants also deserve to be released on bail on par with Accused Nos. 6 & 7.

12) The Appeals accordingly succeed and I proceed to pass the following order :-

(i) Order dated 21 October 2022 qua the Appellants is set aside.

(ii) Appellants–Rahul @ Shambhu Shivaji Kshirsagar and Atul Satish Kshirsagar, are released on bail on executing P.R. Bonds in the sum of Rs.1,00,000/- each with one or more sureties in the like amount and on same terms and conditions as are applied to Accused Nos. 6 and 7 which are under :-

01. The Appellants shall stay/reside in any place other than Satara District and stay out of the Satara District, till further orders and shall visit Satara (Wai) only for the purpose of attending the Court.

02. The Appellants shall provide the details of place where they would reside after release on bail to Wai Police Station.

03. The Appellants shall report to the local police station at the place of their residence on every Monday till further orders.

04. The Appellants shall not leave India without prior permission of this Court.

05. The Appellants shall not tamper with the evidence.

06. The Appellants shall not make any attempt to influence the witnesses.

07. The Appellants shall attend trial Court regularly on the date of hearing unless exempted by the Court.

13) With the above directions, both the Appeals are allowed and disposed of.

[SANDEEP V. MARNE, J.]

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by GAYATRI
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