

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 673 OF 2024

Alim Navab Khan

... **Appellant**

Versus

The State of Maharashtra And Anr.

... **Respondents**

Mr. R. D. Suryawanshi *for the Appellant.*

Mr. Anil S. Kamble Spl. P.P. a/w Ms. Shilpa G. Talhar, APP for the Respondent No.1-State.

Ms. Priyanka Chavan *appointed through Legal Aid Panel Advocate for Respodnent No. 2.*

Mr. N. H. Bansode, API, Manpada Police Station.

CORAM : SANDEEP V. MARNE, J.

DATE : 8 OCTOBER 2024.

P.C. :

1) This is an Appeal filed under provisions of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (**SC & ST Act**) challenging the Order dated 16 May 2024 passed by the Additional Sessions Judge, Kalyan rejecting the application filed by the Appellant (Accused No. 2) for grant of Regular Bail under Section 439 of the Code of Criminal Procedure in connection with C.R. No. 473 of 2023 registered with Manpada Police Station for

offences punishable under Sections 302, 109 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(2)(v) of the SC & ST Act and under Section 37(1) and 135 of Maharashtra Police Act.

2) The prosecution story in brief is that on 25 June 2023 the First Informant and his brother (deceased-Shailesh Avinash Shigvan) received home cleaning order at Palava City and accordingly visited the spot in their auto rickshaw and returned home at 10.15 p.m. Deceased-Shailesh took the auto rickshaw for parking at Deshmukh Homes and the first informant was standing in the lane. At 10.45 p.m. the first informant heard commotion and noticed that deceased-Shailesh was injured and running towards their home and Accused No. 1-Kiran Shinde was chasing him with a knife in his hand. That Accused No. 1 was threatening the people present on the road, on account of which nobody came ahead to help deceased-Shailesh. After deceased Shailesh reached the spot at which first informant was standing he fell unconscious whereafter Accused No.1 left the spot. The First Informant saw grievous injuries being suffered by deceased-Shailesh and accordingly he took deceased-Shailesh to hospital along with known persons. Upon being taken to the hospital, Shailesh was declared dead. It appears that supplementary statement of the first informant was recorded on 9 July 2024, wherein he stated that he took deceased-Shailesh in auto rickshaw with Vijay Shinde, Sunil Rathod and Arvind Chavan to the hospital and during the journey, the First Informant enquired with Shailesh as to why Accused No.1 was chasing him with knife in his hand. According to the First Informant, a dying declaration was made by deceased - Shailesh that while he was parking the auto rickshaw, he was received a phone call from Alim Khan (Appellant) and

Kiran (Accused No. 1) and therefore he approached Tata Naka where Kiran Shinde, Kishor Zhende and Buntty Ghodake were present and the said persons took deceased Shailesh at Monarch Crystal Building behind PMC Bank and at that spot, Accused No.1-Kiran assaulted Shailesh with knife on account of old quarrel between them. When deceased Shailesh attempted to run towards house, Kiran Shinde followed him with knife. This is how on account of presence of the Appellant at the spot where assault was committed on deceased-Shailesh together with the allegation of making phone call, the Appellant has been arraigned as Accused No. 2 in the FIR and he has been arrested on 12 July 2023 and has been in custody since then.

3) I have heard Mr. Suryawanshi, the learned counsel appearing for the Appellant. He would submit that admittedly there is no allegation of assault by the Appellant and that the allegation of assault is attributed solely to Accused No. 1 Kiran. He would submit that the only on the allegations of presence of the Appellant at spot as well as making phone call to deceased Shailesh, he has been arrested. He would submit that statement of some of witnesses would indicate that the Appellant did not have phone number of deceased Shailesh and that therefore it is unlikely that the Appellant would have made the phone call to the deceased. He would submit that the Appellant is under incarceration for over one year despite not being accused of committing any assault or causing any injury to the deceased resulting in his death. He would therefore submit that this is a perfect case where the Appellant deserves to be enlarged on bail.

4) The Appeal is opposed by Ms. Priyanka Chavan, the learned counsel appointed by this Court from Legal Aid Panel. She would submit that in addition to the supplementary statement of the first informant Viki Avinash Shilvant, there are similar statements of three independent witnesses viz Vijay Shinde, Sunil Rathod and Arvind Chavan, which also clearly corroborate presence of the Appellant at the spot where assault is committed on the deceased. She would further submit that the presence of the Appellant is further corroborated by Call Detail Record (CDR) as well as CCTV footage. She would accordingly submit that the Appellant is responsible for calling the deceased at the spot where the assault is committed. That therefore the offence is under Sections 109 and 34 of the IPC are clearly made out against the Appellant. She would also submit that Appellant is a resident of Kalyan and therefore there is every possibility of giving of threats to the witnesses associated with the case in the event of the Appellant being released on bail. She would accordingly pray for dismissal of the Appeal.

5) The Appeal is also opposed by Mr. Kamble, the learned Special Public Prosecutor appearing for Respondent No.1-State. He would submit that there is clear conspiracy on the part of all the accused in committing the murder of the deceased. That all the accused were prepared for commission of crime and the Appellant called the deceased at the spot where the assault is committed. That therefore participation in the crime by the Appellant is proved. He would submit that since presence of the Appellant at the crime scene is clearly established, there is no question of releasing him on bail in connection

with commission of serious crime, which might entail punishment of life imprisonment. He would pray for dismissal of the Appeal.

6) After having considered the submissions canvassed by the learned counsel appearing for parties and after going through various witness statements, it is clear that the assault caused on the deceased resulting in his death is not attributed to the Appellant in any manner. Various statements made by the witnesses clearly indicate that Accused No. 1 Kiran Shinde alone was running behind the deceased with knife in hand. This incident is witnessed by the First Informant personally and in the initial statement recorded on 26 June 2023, the First Informant did not even name the Appellant. True it is that he could be in a state of shock and therefore in his supplementary statement recorded on 9 June 2023, he has given account of the dying declaration made by the deceased to him and to three other persons Vijay Shinde, Sunil Rathod and Arvind Chavan. However, even if the alleged dying declaration made by the deceased to the said four persons is accepted to be corrected, there is no allegation in the said declaration that the Appellant committed any assault on the deceased. The only role sought to be attributed to the Appellant is making a phone call to the deceased possibly for the purpose of calling him at the spot where the crime has been committed. Though Mr. Suryawanshi has attempted to express doubts about making such phone call, there appears to be CDR on record indicating that such phone call was indeed made by the Appellant to the deceased. Be that as it may. I proceed on assumption that the Appellant did make a phone call to the deceased at the relevant time. Another aspect considered adverse against the Appellant is his presence at the crime scene where the first assault was

committed. The presence is reflected in the alleged dying declaration made by the deceased to the said four persons. Even if the said declaration is considered as true, apart from presence of the Appellant at the scene, there is nothing on record to indicate that he took any active part in commission of assault on the deceased.

7) In absence of any allegation of commission of assault by the Appellant on the deceased coupled with the fact that the Appellant has spent a period of about 15 months in the custody, in my view, he deserves to be enlarged on bail. The apprehensions expressed by Ms. Chavan about the Appellant misusing the liberty for threatening the witnesses associated with the crime (considering the fact that he is friend of the main accused Kiran Shinde) can be taken care of by imposing stringent conditions.

8) The Appeal accordingly succeeds and I proceed to pass the following order:

i) Order dated 16 May 2024 passed by the learned Additional Sessions Judge, Kalyan is set aside.

ii) Appellant Alim Khan (Accused No.2) arrested in connection with C.R. No. 473 of 2023 registered with Manpada Police Station for offences punishable under Sections 302, 109 read with Section 34 of the Indian Penal Code, 1860 and Sections 3(2)(v) of the SC & ST Act and under Section 37(1) and 135 of Maharashtra Police Act shall be

released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.

iii) Appellant shall not enter the jurisdiction of Manapa Police Station and shall stay away from the limits of the said police station during pendency of Trial.

iv) Appellant shall not contact any witnesses associated with the case and shall not pressurize the informant or any other witnesses acquainted with the facts of the case nor shall tamper with the evidence either directly or indirectly.

v) Appellant shall furnish identity and address proof of himself and of his two blood relatives while furnishing sureties.

vi) Appellant shall attend Trial Court regularly unless exempted from personal appearance.

vii) 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 Trial Court as well as to the concerned Police Station in writing.

9) With the above directions, the Appeal is allowed and disposed of.

[SANDEEP V. MARNE, J.]