

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 884 OF 2024

Chandrakant Tukaram Aldar

... **Appellant**

Versus

State of Maharashtra And Anr.

... **Respondents**

Mr. Satyavrat P. Joshi *a/w Ms. Shivani Kondekar a/w Mr. Yash G. Fadtare for the Appellant.*

Ms. Anuja S. Gotad, APP *for the Respondent No.1-State.*

Mr. Siddheshwar Kalel *for Respondent No.2.*

Mr. S. P. Wagh, HC. Sangola Police Station, Solapur *is present.*

CORAM : SANDEEP V. MARNE, J.

DATE : 3 OCTOBER 2024.

P.C. :

1) This Appeal filed under provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**), challenging the Order dated 12 August 2024 passed by the learned Special Judge, Pandharpur rejecting Applicant's application for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No. 247 of 2024 (Special Case No. 18 of 2024) registered with Sangola Police Station for the offences

punishable under Sections 302, 323, 143, 147, 148, 149 of Indian Penal Code read with 135 of Maharashtra Police Act and Sections 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(va) of SC & ST Act.

2) The prosecution story is that on 21 March 2024, Bira Kharat and Kundlik Aldar had abused Ritesh Kate and Sujit Kate for abrupt overtaking of motorcycle. On 22 March 2024, fight occurred between two groups. It appears that Suraj @ Bandya Ramesh More took out knife and assaulted deceased Balu Shamrao Aldar and continued assaulting Dattatraya Mahadev Aldar and Kundlik Aldar. It is alleged by the prosecution that on account of such assault by Suraj @ Bandya Ramesh More, the accused Kundlik Aldar, Dattatraya Aldar Balu Shamrao Aldar, Biru Dnyanu Kharat and Chandrakant Tukaram Aldar (Appellant) assaulted Suraj @ Bandya Ramesh More by wooden plank, kicks and fists, which resulted in death of Suraj @ Bandya Ramesh More. The Appellant is accordingly charged with offences punishable under Sections 302, 324, 323, 143, 147, 148 and 149 of Indian Penal Code in connection with death of Suraj @ Bandya Ramesh More, in addition to offence under the SC & ST Act.

3) It appears that on account of assault by use of knife committed by the deceased Suraj @ Bandya Ramesh More, Balu Shamrao Aldar (belonging to Appellant's group) has also died and accordingly cross case is registered against the opposite group, in which several accused belonging to opposite group have been arrested and are in custody.

4) The application for bail filed by the Appellant-Chandrakant Tukaram Aldar (Accused No.5) in Special Case (Atrocity) No. 18 of 2024 has been rejected by the learned Special Judge.

5) I have heard Mr. Joshi, the learned counsel appearing for the Appellant. He would submit that the case involves a free fight between two groups, in which the aggressors are undoubtedly the opposite group. He would submit that the deceased Suraj @ Bandya Ramesh More has assaulted group member of the Appellant by use of knife and caused his death. That therefore aggression on the part of opposite group is clearly made out. He would accordingly rely on the judgment of the Apex Court in ***Azhar Sah Vs. State of Bihar & Others***¹ in support of his contention that when there is a free fight between two groups where the opposite group is the aggressive party, the Appellant deserves to be granted bail in absence of attribution of any specific role to him. Mr. Joshi would further submit that the allegations with regard to assault on the deceased Suraj @ Bandya Ramesh More are omnibus in nature without attribution of any specific role to the Appellant. Mr. Joshi would therefore, submit that conviction of the Appellant under the provisions of Section 302 of IPC is unlikely. That even if, the Appellant is ultimately held guilty, he can, at the highest, be convicted for offence punishable under Section 304 for which the punishment is imprisonment upto 10 years. He would therefore submit that since the Appellant is not likely to be convicted and punished with life imprisonment, he deserves to be released on bail. Mr. Joshi would also rely upon order passed by this Court in ***Mohammad Rafiq Abdul Jabbar Shaikh Vs. State of***

¹ (2008) 5 SCC 82

Maharashtra² in support of his contention that in respect of omnibus allegations, not indicating any specific role to the accused, grant of bail would be warranted. Lastly, Mr. Joshi would rely upon statement of Sachin Shankar Aldar recorded in connection with the chargesheet filed against the opposite group, which clearly indicates that the Appellant himself has sustained injuries. He would submit that the statement of said Sachin Shankar Aldar would in fact show that in respect of the earlier incident occurring at 7.30 p.m. on 22 March 2024 Appellant sustained injury and was taken to dispensary for medical treatment. He would therefore submit that presence of the Appellant in respect of the second incident of 22 March 2024 at 8.30 p.m. is therefore questionable. Mr. Joshi would therefore, pray for enlarging the Appellant on bail.

6) The Appeal is opposed by Mr. Kalel, the learned counsel appearing for Respondent No. 2. I have also heard Ms. Gotad, the learned APP appearing for Respondent No.1-State.

7) After having considered the submissions canvassed by the learned counsel appearing for parties, it is clear that the case involves fight between two groups in which death of one member of each group is caused. From Appellant's group, Balu Shamrao Aldar has suffered death, which is attributed to the assault committed by Suraj @ Bandya Ramesh More by use of knife. From the opposite group, Suraj @ Bandya Ramesh More has suffered death, which is sought to be attributed to the assault committed by members of Appellant's group by use of

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Bail Application No. 1482 of 2023, decided on 23 April 2024

wooden plank, kicks and fists. Statement of Abhiman @ Nagesh Tanaji More, witness supporting the story of opposite group, would indicate that Appellant has been specifically named in respect of assault committed on Suraj @ Bandya Ramesh More by use of wooden plank, kicks and fists. There are similar statements of several other witnesses, in which the Appellant is specifically named.

8) At this juncture, it is difficult to ascertain as to who exactly is the aggressor. The witness statement of Sachin Shankar Aldar relied upon by Mr. Joshi seeks to suggest that the deceased-Suraj @ Bandya Ramesh More was the aggressor who started the assault by use of knife. On the contrary, the statements recorded in case initiated against Appellant's group would clearly indicate that the assault was initiated by the Appellant's group and that the deceased- Suraj @ Bandya Ramesh More took out the knife only as reaction to the assault so initiated by the Appellant's group. Therefore, at this juncture it is difficult to ascertain as to which group initiated the fight and who is the real aggressors.

9) I am also unable to accept Mr. Joshi's contention, at this juncture that conviction for offence under Section 302 is unlikely to be secured on the basis of material on record. It is quite premature at this juncture to record any finding in this regard. Death of Suraj @ Bandya Ramesh More is undoubtedly caused and the issue as to whether the crime is committed with intention of killing the deceased is something which can be ascertained after the evidence is led. Even otherwise, there cannot be an absolute proposition of law that in every case where

the offence is punishable for imprisonment for period upto 10 years, grant of bail is must. The Appellant has been arrested on 29 May 2024 and he has spent only four months in the custody. It appears that both the groups have indulged into fight against each other in respect of petty incident of overtaking of the bike. This shows propensity on the part of Appellant in indulging in serious assault as a member of his group over the petty issues. In that view of the matter, releasing the Appellant on bail at this stage would not be prudent considering the tendency of committing serious crime over the petty issue.

10) Mr. Joshi's contention that the Appellant himself has suffered injury does not cut any ice. The statement of witness- Sachin Shankar Aldar (recorded in connection with FIR lodged against members of opposite group) cannot be accepted as a gospel truth at this stage as his statement appears to be completely silent about assault committed on Suraj @ Bandya Ramesh More which has undoubtedly caused his death. If the statement of Sachin Shankar Aldar is to be relied upon, it will have to be concluded that the Appellant was not present when the crime was committed and that the deceased Suraj @ Bandya Ramesh More was never assaulted. This version appears to be contradictory to several statements of witnesses specifically naming the Appellant in respect of assault committed on Suraj @ Bandya Ramesh More .

11) Considering the material available on record coupled with the fact that the Appellant has been arrested on 29 May 2024, I am not inclined to release the Appellant on bail. Considering the seriousness of

the offence, releasing the Appellant on bail at this juncture may result in tampering of evidence. The learned Special Judge has rightly rejected the Appellant's application for bail. The appeal being devoid of merits is **dismissed**.

12) Needless to say that the observations made in the order are *prima facie* for considering Appellant's release on bail and the Trial Court shall not be influenced by the same while deciding the case finally. Appellant would be at liberty to apply for bail afresh before the Trial Court after one year.

[SANDEEP V. MARNE, J.]