

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.931 OF 2024

Smt. Bhanubai Parshuram JadhavAppellant
V/S
The State of Maharashtra & Anr.Respondents

Mr. Raju Suryawanshi *for the Appellant.*
Ms. Shilpa K. Gajare-Dhumal, APP *for Respondent No.1-State.*
Mr. Anil Kamble *with Mr. Prakash Maitri for Respondent No.2.*

Mr. Dipak Deshmukh, ACP, West Division Bhiwandi City Police Station, Thane, present in Court.

CORAM: SANDEEP V. MARNE, J.
DATE : 10 OCTOBER 2024.

P.C.:

1. This is an Appeal filed under provisions of section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (**SC & ST Act**) challenging order dated 17 August 2024 passed by Additional Sessions Judge, Bhiwandi rejecting the application filed by the Appellant for grant of regular bail in connection with Crime No.302 of 2024 registered with Bhiwandi City Police Station for offences punishable under sections 307, 302, 367, 364, 143, 144, 147 and 148 of Indian Penal Code read with sections 3(e), 3(r), 3(2)(v), 3(2)(va) and 3(2)(d) of the SC & S.T. Act.

2. Prosecution story in brief is that on 14 February 2024, a fight took place between Deva Dhotre and Sanket Bhosale at the gate of the College in which apparently Deva Dhotre suffered injuries. That Deva Dhotre informed his father Kailash Dhotre about the fight and few

persons arrived at the spot, inquired with Deva Dhotre about the assailant and started searching him. The second part of incident, according to the prosecution is where persons from side of Deva Dhotre (including Appellant, who is Deva's paternal aunt) were searching Sanket Bhosale for taking revenge. It is alleged that deceased Sanket Bhosale was assaulted near the house of Deva Dhotre and witness Shivam Maniram Nishad video recorded such assault on his mobile phone. It is alleged that the said assault committed on Sanket Bhosale resulted in severe injuries for Sanket and he went into coma and later passed away. The FIR was initially registered on 15 February 2024 at the instance of Sanket's father (Sunil Yedappa Bhosale) under provisions of sections 143, 144, 147, 148, 307 and 367 of Indian Penal Code. It appears that after death of the injured, section 302 of Indian Penal Code has been added and since the injured belongs to Scheduled Caste community, therefore offences under sections 3(e), 3(r), 3(2)(v) and 3(2)(va) and 3(2)(d) of the SC & ST Act are also added. So far as the Appellant is concerned, she is sister of Kailash Dhotre (father of Deva Dhotre) and it is alleged that she has also participated in the crime resulted in Sanket's death.

3. I have heard Mr. Suryawanshi, the learned counsel appearing for Appellant, who would submit that the Appellant has not participated in assault on the deceased. That even if the prosecution story of witness Shivam Maniram Nishad recording the incident on mobile phone is to be believed, still the said recording does not depict Appellant assaulting the deceased. That in the present case, limited role is ascribed to the Appellant of mere presence at the crime scene. That Appellant is a lady, who was merely attempting to pacify the other accused, who were allegedly assaulting the deceased. That Deva Dhotre has also suffered grievous injuries on account of assault

committed on him by use of knife. That Appellant has accompanied the other accused only for finding of the person who had assaulted Deva Dhotre. That Appellant is innocent and has not participated in commission of crime in any manner. That despite non-specification of any specific role, Appellant had been in custody since 25 February 2024. He would therefore pray for release of Appellant on bail.

4. The Appeal is strenuously opposed by Ms. Gajare-Dhumal, the learned APP appearing for Respondent No.1/State. She would submit that Appellant is equally responsible for cause of death of Sanket. That she was part of unlawful assembly committing the crime leading to Sanket's death. That evidence on record suggests that after severe assault, Sanket was kept locked inside a room and when Sanket's relatives were making enquiries, Appellant misguided them by stating that she was not aware about Sanket's whereabouts. That if Appellant was to disclose Sanket's whereabouts, he would have been provided with necessary medical treatment saving his life. That Appellant is therefore equally responsible for death of Sanket and cannot attempt to take benefit of transcript of video recording, which covers only small part of the crime scene. That the assault committed on Sanket was so severe that he was under coma for eight long days and was required to be brought at KEM Hospital, Mumbai and administered treatment in ICU. That there are four eye-witnesses to the incident whose statements under section 164 of the Code of Criminal Procedure (**the Code**) have been recorded. That Appellant is a history-sheeter and has been accused of commission of offence under section 307 of Indian Penal Code in C.R. No.82 of 2019. That therefore there is every likelihood of Appellant threatening the witnesses associated with the case. She would therefore pray for dismissal of the Appeal.

5. Mr. Kamble would appear on behalf of Respondent No.2 Complainant and opposes the Appeal. He would submit that the Crime has been committed in conspiracy and that therefore Appellant cannot seek to segregate her role. That an application has been made before the learned Special Judge for conduct of further investigations and that the same is pending. He would submit that since Appellant has committed serious crime, her release on bail would not be prudent especially considering her antecedents. He would pray for dismissal of the Appeal.

6. I have considered the submissions canvassed by the learned counsel appearing for parties, I have gone through the reasons recorded by the learned Judge for rejecting the bail application and I have also perused the records of the case.

7. The alleged crime is committed on account of a minor scuffle that had occurred between juvenile Deva Kailesh Dhotre and deceased Sanket Bhosale. The statement of witness Vivek Bajrang Dolas shows that he had assaulted Deva Dhotre with knife and injuries allegedly suffered by Deva Dhotre became the reason for his father, relatives and other persons to search Sanket Bhosale for taking revenge. Considering the limited role ascribed to the Appellant herein it is not necessary to consider statements of various witnesses recorded by the police. The incident of actual assault is apparently witnessed by few eye witnesses viz. Satyam Ramprakash Yadav and Shivam Maniram Nishad. One of the eyewitnesses, Shivaram Maniram Nishad has apparently video recorded some part of the incident. Satyam, Prince and Shivam were apparently picked up in a Scorpio vehicle and they were searching for the assailant, who

assaulted Deva Dhotre. Satyam, Prince and Shivam travelled in the said Scorpio vehicle and noticed presence of Appellant in the said vehicle. The next part of the role ascribed to the Appellant is to be seen in the transcript of video recording, which shows her presence at the crime scene, where Satyam was assaulted by several accused persons. The said transcript records that Appellant was hurling abuses.

8. Thus, beyond Appellant's presence in Scorpio vehicle as well as at the crime scene, where she was hurling abuses, there is nothing on record, as of now, to indicate participation by Appellant in assault committed on Satyam. While Mr. Suryawanshi has attempted to suggest that Appellant was merely trying to pacify the other accused, the claim is apparently not supported by material on record. I therefore proceed on an assumption that Appellant was present at the crime scene and has also participated in searching Sanket with other accused, with an intention of taking revenge. However, *prima facie* there appears to be no material on record to indicate that Appellant has participated in assault committed on deceased Sanket. It is contended by the learned APP that Appellant mislead the search party about whereabouts of Sanket and that true disclosure by her would have ensured necessary medical treatment and saving his life. This aspect would obviously be considered during course of trial and exact complicity of Appellant in commission of crime can be ascertained. Appellant being paternal aunt of Deva Dhotre, who had suffered injury in the first scuffle could be curious about the persons assaulting Deva and her presence in the vehicle and at the crime scene could accordingly be justified. As of now, there is nothing on record to suggest that Appellant has committed any overt act of assaulting the deceased.

9. There is one antecedent against Appellant pertaining to the year 2019 and ordinarily this could be a ground for denying her bail. However, the factor of being a lady who has not been ascribed any role in actual assault on deceased, goes in favor of Appellant for grant of bail. Appellant was arrested on 25 February 2024 and has spent about eight months in the custody. Investigations are complete and chargesheet has been filed. She cannot be kept in incarceration indefinitely. The Trial is not likely to be concluded in immediate near future. So far as the apprehension about likelihood of she threatening the witnesses and tampering with the evidence is concerned, stringent conditions can be imposed. It is suggested by Mr. Kamble that application for further investigations is pending before the Learned Special Judge. In the event of such application being allowed, the Appellant can be directed to cooperate with conduct of further investigations. In that view of the matter, Appellant deserves to be enlarged on bail. It is however made clear that the Appellant is being released on bail considering a special circumstance of she being a lady and her release on bail shall not *ipso facto* be a factor for claiming similar relief by other accused only on the principle of parity.

10. I accordingly proceed to pass the following order:

ORDER

- i) Order dated 17 August 2024 passed by Additional Sessions Judge, Bhiwandi is set aside.
- ii) Appellant Bhanubai Parashuram Jadhav be released on bail in Crime No.302 of 2024 on furnishing PR bond in the sum of Rs. 25,000/- with one or more sureties in the like amount subject to following conditions:

- a) Appellant shall furnish identity and address proof of herself and of her two blood relatives while furnishing sureties;
- b) Appellant shall not enter the jurisdiction of Bhiwandi City Police Station;
- c) Appellant shall not threaten or contact or pressurize any of the witnesses associated with the case nor shall tamper with the evidence in the case;
- d) If needed, Appellant shall co-operate with further conduct of investigations by remaining present in the police station as and when summoned by the Investigating Officer;
- e) Appellant shall attend each date of hearing before the Trial Court, unless exempted and two consecutive defaults in appearance before the Trial Court would entitle the prosecution to file application for cancellation of bail.

11. With the above directions, the Criminal Appeal is **allowed and disposed of**.

(SANDEEP V. MARNE, J.)

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