

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1069 OF 2024

1. Rajesh Subrao Deshmukh

2. Vijaya Subrao Deshmukh

...Appellants

V/s.

State of Maharashtra and Anr.

...Respondents

Mr. Prashant Hagare, i/b. Mr. Krishna Tarde for the Appellants

Mr. Aunja S. Gotad, APP for Respondent No.1-State.

Mr. Ankur Pahade, for Respondent No.2.

Mr. Prabhakar Khanose, PSI, Dehu Road Police Station, Pimpri-Chinchwad, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 23 October 2024.

P.C. :

1. This is an appeal filed under provisions of Section 14-A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocity) Act, 1989 (SCST Act) challenging order dated 6 September 2024 passed by the Additional Sessions Judge, Vadgaon Maval, Pune, rejecting application of Appellants for grant of bail in connection with C.R. No.107 of 2024 registered with Dehu Road Police Station, Pimpri-Chinchwad, Pune, for offences punishable under Sections 302, 143, 147, 149, 506 and 109 of IPC and Section 3(2)(v) of the SCST Act.

2. The FIR is lodged by Respondent No.2-Complainant in connection with death of his son -Vishal Thori. It is alleged in the FIR statement dated 6 March 2024 that there was a minor scuffle between deceased Vishal and Suyash Vishal Deshmukh. On 5 March 2024, Complainant's wife received a phone call from Appellant No.2 -Vijaya Deshmukh and during telephonic conversation, Appellant No.2 informed Complainant's wife that deceased-Vishal had quarreled with Rohan once again, that Rohan had collected 20-25 boys, that Vishal would not be spared and would be beaten up badly. Complainant also refers to telephonic conversation between himself and Appellant No.1, in which Appellant No.1 allegedly informed him that Vishal would not be spared and would be badly beaten, that if he survives, he would be handed over to police. When Complainant was searching for Vishal and made a telephonic call to Vishal's friend Bhagyesh, he informed that Vishal had called Bhagyesh and had informed him that there was a fight between Vishal and Rohan Deshmukh and Rohan has assaulted Vishal by stone on his head and also in his ribs by hand. The FIR statement also refers to conversation between Complainant and Rohan Deshmukh wherein Rohan informed Complainant that Vishal had arrived at Rohan's shop in inebriated state and fought with Rohan, which resulted in altercation when Rohan, his brother and friends assaulted Vishal and ran away. Vishal was taken to YCM Hospital, Pimpri, where he was declared dead. Appellant No.1 is arraigned as accused No.7 and Appellant No.2 is arraigned as accused No.6. Their bail applications have been rejected by learned Special Judge by order dated 6 September 2024, which is subject matter of challenge in the present Appeal.

3. I have heard Mr. Hagare, the learned counsel appearing for the Appellants, Ms Gotad, the learned APP for Respondent No.1-

State and Mr. Pahade, the learned counsel appearing for Respondent No.2-Complainant.

4. After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that both the Appellants are not accused of actual participation in the assault on deceased -Vishal. Mr. Hagare has sought to suggest that the role of both the Appellants is restricted to only to alleged threats given during telephonic conversation with Complainant and his wife, which at the highest can attract offence under Section 506 of the IPC. He has submitted that their mobile phones have been recovered and that therefore custodial interrogation of both the Appellants is not warranted.

5. On the other hand, Ms. Gotad and Mr. Pahade have strongly opposed grant of bail to either of the accused submitting that they have made the intention of killing the deceased very clear during telephonic conversation and that therefore their participation in the crime is obvious.

6. In my view, so far as role of Appellant No.2-Vijaya Deshmukh (accused No.6) is concerned she is accused of only threatening the mother of deceased during telephonic conversation. The records of the case do not indicate that she is otherwise associated with commission of assault on the deceased. Appellant No.2-Vijaya Deshmukh is 70 years old and a woman. She is in custody since 25 April 2024. Considering these factors, special dispensation needs to be made in respect of Appellant No.2-Vijaya by releasing her on bail.

7. However, so far as Appellant No.1-Rajesh Deshmukh is concerned, he does not deserve to be released on bail at this juncture. Statement of witnesses -Mahesh Vasu Naik and Mukesh Rangnath Zha recorded on 16 March 2024 would indicate that the duo had witnessed the assault on the deceased -Vishal. Witness-Mukesh Rangnath Zha called up police at 12.44 a.m. and informed about the incident. He also called Sai Services Ambulance and they were waiting for arrival of the Ambulance. At that time, Appellant No.1 - Rajesh Deshmukh arrived on his Activa Scooter and enquired with the duo as to whether Vishal was alive or dead. Witnesses -Mahesh and Mukesh informed Appellant No.1 that the injured was alive and that they had called for Ambulance. At that time, Appellant No.1 asked both the witnesses to leave the spot stating that they had nothing to do with the injured and they should let him die. Appellant No.1 thereafter left the spot. Thus, there is an extra role attributed to the Appellant No.1, who attempted to prevent the two witnesses from saving the life of deceased by asking them to flee the spot and let the deceased die. Considering this role alleged to be played by Appellant No.1, no special dispensation can be given to him at this juncture on account of his disability. Appellant No.1 is accused of threatening the parents of the deceased of killing-Vishal. While Appellant No. 2 (grandmother) merely spoke about Vishal being beaten up, Appellant No. 1 clearly made the intention of killing the deceased known during the telephonic conversation. Additionally, he arrived at the crime scene, saw the deceased dying and prevented the witnesses from providing any medical treatment to him. Considering these acts alleged against Appellant No.1, the possibility of he pressurising the witnesses and tampering the evidence cannot be ruled out. I am therefore, not inclined to interfere in the order of the learned Special Judge refusing to grant bail in favour of Appellant No.1.

8. Consequently I proceed to pass following order:-

- i) Order dated 6 September 2024 passed by learned Additional Special Judge, Vadgaon Maval, is only partly set aside in respect of Appellant No.2- Vijaya Subrao Deshmukh-Accused No. 6.
- ii) Appeal stands dismissed qua Appellant No.1-Rajesh Subrao Deshmukh, Accused No.7.
- iii) Appellant No.2-Vijaya Subrao Deshmukh (accused No.6), who is arrested in connection with C.R. No.107 of 2024 registered with Dehuroad Police Station, Pimpri-Chinchwad, Pune, for offences punishable under Sections 302, 143, 147, 149, 506 and 109 of IPC and Section 3(2)(v) of the SCST Act, shall be released on bail on furnishing PR bonds in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount.
- iv) Appellant No.2 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 No.2 shall inform her latest place of residence and mobile contact number immediately after being released and/or change of residence and mobile phone details, if any, from time to time to the Trial Court as well as to the concerned Police Station, in writing.

- vi) The Appellant No.2 shall cooperate in the conduct of trial and shall attend each date of hearing before the Trial Court, unless exempted.
- vii) After being released on bail, Appellant No. 2 shall not enter the jurisdiction of Dehu Road Police Station till conclusion of the trial.

7. With above directions, Appeal stands disposed of.

8. It is clarified that the observation made herein are prima facie and the Trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

[SANDEEP V. MARNE, J.]