



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

920 CRIMINAL APPEAL NO. 1057 OF 2024

AKASH @ SAGAR SUKHDEV SONWANE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for the Appellant : Mr.Shaikh Nasimoddin Rafiyoddin

APP for Respondent/State : Mrs.Chaitali Choudhari Kutti

Advocate for Respondent No.2 : Mrs. Falguni M.Kulkarni

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CORAM : SHAILESH P. BRAHME, J.

DATE : 19th MARCH 2025

PER COURT :

1. Heard both sides.

2. Appellant is challenging order dated 03.08.2022 below Exhibit-24 passed by Learned Additional Sessions Judge, Bhusawal Dist.Jalgaon in Special Case No.02 of 2020 rejecting his application for regular bail.

3. Appellant is languishing in jail since 11.10.2019. The incident occurred on 06.10.2019. The report was lodged on 07.10.2019. The charge-sheet was filed on 31.12.2019. The co-accused Golu @ Arbaj Khan Ajar Khan was enlarged on bail vide order dated 07.10.2024 by the co-ordinate bench in Criminal Appeal No. 665 of 2024. The charge is framed but there is no further progress in the trial.

4. In the above backdrop, learned counsel Mr. Shaikh submits that there is no incriminating role surfacing against the appellant from the police papers and the appellant was all the while in custody till this date. It is submitted that the role attributed against co-accused Golu @ Arbaj Khan is identical that of with the appellant. He was released on bail by order dated 07.10.2024 by High Court. On the ground of parity appellant is also entitled to be enlarged on bail. It is submitted that C.D.R collected during the course of investigation and statements of few witnesses would not show any prima-facie attribution of the appellant. In the absence of any incriminating material, he is entitled to bail. Reliance is placed on the judgments of **Jayendra Saraswathi Swamigal vs. State of Tamil Nadu** in Criminal Appeal No.44 of 2005 arising out of SLP (Crl.) No.6192 of 2004, **Ramkrushna @ Rajju vs. The State of Maharashtra and ors.** In Criminal Appeal No.873 of 2022 and **Tapas Kumar Palit vs. State of Chhatisgarh** reported in 2025 0 Supreme(SC) 346

5. Learned APP relies on the affidavit-in-reply to oppose the submissions of the appellant. It is submitted that appellant is involved in very serious and heinous offence in which five members of a family were killed by accused including the appellant. They acted in conspiracy to do away with members of the family. She would vehemently submit that C.D.R and the statements of Sonu Meghraj and Umesh Bhagwan Patil directly connect the appellant to the offence in question and indicates conspiracy. It is submitted that appellant was in contact with other accused and C.D.R report

indicates eight calls in between the appellant and the co-accused.

6. Learned APP further submits that appellant was absconding and he was required to be arrested. The appellant and the other co-accused formed a dangerous gang which is detrimental to the society. It is informed that accused No. 1 committed murder of accused No.2 while they were in jail. If such is the audacity of the accused, there is no reason to exercise any discretion in favour of the appellant. It is vehemently submitted that principles of parity can not be invoked in the present matter.

7. Learned counsel Mrs.Kulkarni appearing for respondent No.2 submits that there is cogent material on record to indicate conspiracy and the appellant was member of it. He was present when accused No.1 committed murder of accused No.2 in jail.

8. I have considered rival submissions of the parties and I have gone through the relevant papers of the investigation. The appellant had filed application for bail and it was rejected previously. Being aggrieved he had filed Criminal Appeal No. 628 of 2022. It was permitted to be withdrawn by High Court vide order dated 27.01.2022. The appellant submitted application for regular bail, after release of co-accused Golu @ Arbaz Khan vide order dated 07.10.2024 in Criminal Appeal No. 665 of 2024. Five members of the family have been done away with by the accused. The appellant and the accused are facing serious charges.

9. It transpires that there is no overt act attributable to the appellant for committing murder of the members of the family. It is not the case of the prosecution that when the incident took place, appellant was with the main perpetrators. The role attributed to the appellant was that he was seen in company of co-accused by witness Mr. Sonu and Umesh Bhagwan Patil after the incident. Interestingly co-accused Golu @ Arbaj Khan was not in picture when actually overt act was committed. He was also been attributed to have been seen in company of co-accused. Learned counsel for the appellant is right in submitting that role attributable to the appellant and co-accused Golu @ Arbaj Khan is identical.

10. The co-ordinate bench in Criminal Appeal No.665 of 2024 by reasoned order enlarged co-accused Golu @ Arbaj Khan on bail. In his case also C.D.R was pitted against him which were dealt with by learned Judge in following manner.

11. Appellant is implicated in the present offence with the aid of Section 120-B of I.P.C. To show the involvement of appellant in criminal conspiracy, prosecution has strongly relied on the circumstance that before and after commission of offence appellant was in contact with his brother accused No.2 Mohsin Ajgar Khan and CDRs to that effect are collected during investigation. He was also seen in the company of co-accused after the incident.

Prosecution has not alleged direct Involvement of appellant in commission of offence punishable under Sections 302 and 307 of

I.P.C. as the said offence is committed by accused Nos.1 to 3. Except CDR reports and statements of some of the witnesses who have seen appellant with his brother after the incident, there is no other material showing involvement of appellant in the present crime. Prima facie, this appears to be weak piece of evidence against appellant.

13. In the charge-sheet 78 witness are cited by the prosecution. Appellant has withdrawn his earlier appeal for bail on 12/03/2024, since then till date no charge is framed in Special Case No.02/2024. Obviously trial is not likely to conclude in near future. Appellant, therefore, need not be detained for indefinite period.

11. Considering the allegations against him, the appellant and the co-accused I find merit in the submissions of learned counsel for the appellant. The appellant deserves same treatment.

12. The investigation is over and the trial is at the stage of recording of the evidence. Appellant is in jail since 11.10.2019. I do not see any propriety in keeping him behind bars. The consequence of C.D.R would be taken into consideration during full-fledged trial. The instance of murder of accused no.2 by the accused no.1 would not be sufficient to deny bail to the petitioner. The activities of the appellant can be monitored by the State mechanism after releasing him on bail.

13. Learned counsel for the appellant referred to judgment of

Supreme Court in the matter of **Jayendra Saraswathi Swamigal vs. State of Tamil Nadu** in Criminal Appeal No.44 of 2005 arising out of SLP (Crl.) No.6192 of 2004. I have gone through paragraph No.14 of the judgment. Relying on those observations, I find that even if it is accepted that there was conversation between the appellant and the co-accused, by that itself would not establish the conspiracy prima-facie conspiracy to deny the bail. Next reliance is placed on the judgment of the Division Bench of this Court in the matter of **Ramkrushna @ Rajju vs. The State of Maharashtra and ors.** in Criminal Appeal No.873 of 2022. Considering observations in paragraph No.8 of the judgment, I find that in the present case also the author of the crime are already booked by the respondent.

14. Further reliance is placed on the judgment of Supreme Court in the matter of **Tapas Kumar Palit vs. State of Chhatisgarh (supra)**. I have gone through paragraph Nos. 12 to 15 of the judgment. Taking into account the ratio laid down in that case, I am fortified in my view that appellant is entitled to be released on bail. I find that impugned judgment and order is unsustainable. I therefore pass following order :

ORDER

a)Criminal Appeal is allowed.

b) Appellant Akash @ Sagar Sukhdev Sonwane be released on bail in C.R.No.222 of 2019 registered with Bhusawal City

Police Station Dist.Jalgaon for offences punishable under Sections 302,307,120-B,397 r/w 34 of I.P.C and 3/27,4/25 of Arms Act and Section 3(2)(v) of Scheduled Caste and The Scheduled Tribes (Prevention of Atrocity) act and 37(1) r/w 135 of Maharashtra Police Act (Special Case No.02/2020) on furnishing personal bond of Rs.50,000/- with one surety of the like amount.

c) Appellant shall not enter Bhusawal town till conclusion of trial, except on the dates on which his presence is essential for sessions trial. Appellant shall not tamper prosecution evidence.

[SHAILESH P BRAHME, J.]

vsj..