



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

CRIMINAL APPEAL NO.1213 of 2024

Shyam Sahdeo Yatnalkar

...Appellant

V/S

The State Of Maharashtra And Anr.

...Respondents

Adv. Veerdhawal Kakade a/w Mrunal Jadhav for the Appellant.

Adv. Shilpa G. Talhar, APP for the Respondent-State.

Adv. Keral Mehta i/b Vikrant Shinde for Respondent No. 2.

CORAM : SANDEEP V. MARNE, J.

DATED : 3 FEBRUARY, 2025

P.C.:

1. This appeal is filed under the provisions of 14-A of the The Scheduled Castes And The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SCST Act) challenging the order dated 2nd March, 2024 passed by Additional Sessions Judge, Wai rejecting the Application preferred by the Appellant for grant of bail under the provisions of Section 439 of the Code of Criminal Procedure in connection with Cr. No. 153/2018 registered with Wai Police Station for the offences punishable under Section 120B, 302 and 427 r/w. 34 of the Indian Penal Code (IPC) and Sections 3(2)(v), 3(2)(v)(a) and (6) of the SCST Act.

2. I have heard Mr. Kakade, learned counsel for the Appellant, Ms. Talhar, learned APP for the State and Ms. Mehta, learned counsel for Respondent No. 2.

3. Learned counsel for the Appellant relies upon the order dated 18th October, 2024 passed by this Court granting bail in favour of Accused Nos. 3 and 4. He would submit that this Court has granted bail in their favour after noticing that the learned Sessions Judge had granted bail to Accused Nos. 6 and 7 on account of delay in conduct of trial. He would submit that the actual assailants are thus released on bail and the Appellant was not even present at the spot when the crime was committed. He would therefore submit that the Appellant also deserves to be released on bail on the principle of parity.

4. Ms. Talhar, learned APP and Ms. Mehta, learned Counsel for Respondent No. 2 would oppose the Appeal by submitting that the trial in the case has already progressed substantially. They would invite my attention to the findings recorded by the learned Additional Sessions Judge about prosecution taking prompt steps in examining the witnesses. They

would therefore submit that the Appellant cannot be released on bail only on the ground of delay in conduct of trial.

5. Perusal of order dated 18th October, 2024 passed by this Court would indicate that this Court has relied upon the order passed by the learned Additional Sessions Judge granting bail in favour of Accused Nos. 6 and 7 after noticing that only 20 witnesses were examined and the prosecution introduced a new list of 20 witnesses which was likely to take another 3 to 4 years for their examination. This Court held in paragraph No. 6 to 11 of the order dated 18th October, 2024 as under :

6) Thus, on account of liberty secured by Accused Nos.6 and 7 to file fresh applications for bail before the learned Judge, they have been released on bail by the learned Special Judge essentially on the ground that they were in custody for more than 6 years and there is no substantial progress in the trial. The learned Judge has particularly noted the fact that the prosecution itself is not sure about the exact number of witnesses that it intends to examine. The learned Judge has observed that only 20 witnesses were examined by the time order dated 27 September 2024 was passed. The learned Judge has further recorded that on 28 March 2024 the prosecution submitted list of 20 more witnesses to examine. In addition to the list of said 20 witnesses, the prosecution made a vague statement that the said list was provisional and that the names of more witnesses could be included in the said list. On these broad factors, the learned Judge has proceeded to release Accused Nos.6 and 7 on bail.

7) Mr. Shinde would complain that the accused are responsible for delay in the trial and that though the learned Judge is conducting the trial on day-to-day basis, they are deliberately delaying the trial by seeking adjournments on one

pretext or the other. He would further submit that several prosecution witnesses have turned hostile and he would attribute their hostility to bail granted to the accused.

8) In my view, the learned Judge who granted bail in favour of Accused Nos.6 and 7 is aware of the exact circumstances why the trial has not progressed. No finding is recorded in the orders dated 27 September 2024 that any of the Accused were responsible for delaying the trial. On the contrary, the findings recorded in the orders dated 27 September 2024 would indicate that the prosecution appears to be responsible for delay in the trial as the prosecution itself is not sure about the exact number of witnesses that it intends to examine. These findings are not recorded to blame any particular side for the delay in completion of the Trial. The findings are recorded only for the purpose of examining entitlement of the Appellants for being released on bail.

9) If Appellants were also to secure similar liberty from this Court along with Accused Nos.6 and 7 and if they had filed fresh applications for bail before the learned Judge, I am sure, the learned Judge would have released even the present Appellants on bail on par with Accused Nos.6 and 7. There is no dispute to the position that the role that is sought to be ascribed to the present Appellants is on par with the role ascribed to Accused Nos.6 and 7.

10) In that view of the matter, I do not see any reason why the Appellants need to be further incarcerated when similarly placed Accused Nos.6 and 7 have already been released on bail. Also of relevance is the fact that when the learned Special Judge released Accused Nos.1 & 2 on bail by order dated 21 October 2022, an unsuccessful attempt was made by Respondent No.2 Complainant to challenge the said order before this Court by filing Criminal Appeal No. 1248 of 2022. This Court however has rejected the said Criminal Appeal.

11) Considering the facts and circumstances of the present case, I am of the view that, the Appellants cannot be continued in incarceration any further. They have already spent more than 6 years and 4 months in custody. There is no possibility of the trial being concluded in immediate near future. Therefore, on the principle of parity, the Appellants also deserve to be released on bail on par with Accused Nos. 6 & 7.

6. It appears that the Appellant herein is not the main assailant and was apparently not even present at the time of

commission of the crime. He is basically sought to be roped in on account of allegation of conspiracy against him stemming out of electronic evidence. Considering the role of the Appellant and applying the principle of parity, I am of the view that, the present Appellant also deserves to be enlarged on bail. I accordingly proceed to pass the following order.

- (i) Order dated 2nd March 2024 passed by the Additional Sessions Judge, Wai is set aside.
- (ii) Appellant- Shyam Sahdeo Yatnalkar is released on bail on executing P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount and on following conditions :-
 - a) The Appellant shall stay/reside in any place other than Satara District and stay out of the Satara District, till further orders and shall visit Satara (Wai) only for the purpose of attending the Court.
 - b) The Appellant shall provide the details of place where he would reside after release on bail to Wai Police Station.
 - c) The Appellant shall report to the local police station at the place of his residence on every Monday till further orders.
 - d) The Appellant shall not leave India without prior permission of this Court.
 - e) The Appellant shall not tamper with the evidence.
 - f) The Appellant shall not make any attempt to influence the witnesses.

g) The Appellant shall attend trial Court regularly on the date of hearing unless exempted by the Court.

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

(SANDEEP V. MARNE, J.)