

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
APPEAL NO. 646 OF 2025

Omkar A. Gholap

...Appellant

V/s.

The State of Maharashtra & anr.

...Respondents.

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Mr. Satyam Harshad Nimbalkar i/b Mr. Harshwardhan Milind Pawar
for the Appellant.

Mr. A.R. Metkari, APP for the Respondent/State.

Ms Minal Jaiwant Chandnani for Respondent No.2A & 2B (through
VC).

PSI Santosh Muluk, Ghodegaon Police Station, Pune Rural present.

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CORAM : N.R. BORKAR, J.

DATE : 18.08.2025.

P.C. :

1. This appeal filed under section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the said Act") takes exception to the order passed by Sessions Court dated 17th May 2025 below Exhibit-136 in Special Atrocity Case No. 92 of 2021.

2. The appellant is accused in the aforesaid special case and is facing trial for the offences punishable under Sections 302, 143, 147, 148, 149, 326, 325, 324, 504, 506 of the Indian Penal Code, Section 135 of the Maharashtra Police Act and Sections 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act, 1989. By the order impugned, the learned Sessions Court has rejected the bail application filed by the appellant.

3. The prosecution case in brief is that on the date of incident which took place on 27th June 2021, at about 8 pm, the deceased along with his friends had gathered for chit-chatting near their friend's house. At that time, the appellant along with other co-accused approached the deceased and started abusing him. Thereafter, the appellant brutally assaulted the deceased with a Koyta as well as the other co-accused assaulted the deceased with sharp weapons and fist and kick blows on account of previous enmity between them. The deceased was grievously injured and later rushed to the hospital, where he gave his statement on 28th June 2021 and thereafter succumbed to his injuries on 3rd July 2021.

4. I have heard the learned counsel for the appellant, the learned APP for the respondent – State and the learned counsel for the respondent Nos.2A and 2B (brother and father of the deceased).

5. Learned counsel for the appellant submits that according to the dying declaration of the deceased, he was assaulted by the present appellant along with Suraj Gholap and Aniket Gholap. However, on completion of investigation, it was found that they were not present at the time of incident. It is submitted that the

said fact creates doubt about genuineness of dying declaration. Learned counsel for the appellant submits that during the course of investigation, the prosecution has recorded the statement of Sachin Tukaram Rakshe and the said statement do not support the prosecution case. It is submitted that the applicant is in jail for 4 and ½ years and the trial is not likely to be concluded in the near future as it is still at the stage of framing of charge.

6. Learned APP for the respondent/state and the learned counsel for the respondent Nos.2A and 2B submit that the deceased was brutally assaulted by sharp weapons. It is submitted that the present appellant is the prime accused and there are eye-witnesses to the incident. It is submitted that considering the nature of offence and the material against the appellant, he may not be released on bail.

7. Admittedly, in the dying declaration, in addition to the present appellant, the deceased had named Suraj Gholap and Aniket Gholap as assailants. However, lateron it was found that they were not present at the time of incident. The appellant is in jail for 4 and ½ years. Considering overall facts and circumstances of the case, I am inclined to release the appellant on bail subject to certain conditions. In the result, the following order is passed.

ORDER

A] The Appeal is allowed.

B] The order impugned is set aside.

C] The appellant be released on bail in C.R. No.142 of 2021 registered at Ghodegaon Police Station, Dist. Pune for the offences punishable under Sections 302, 143, 147, 148, 149, 326, 325, 324, 504, 506 of the Indian Penal Code, Section 135 of the Maharashtra Police Act and Sections 3(2) (V), 3(2)(VA) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act on furnishing P.R Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount.

D] The appellant shall not tamper with the prosecution evidence.

E] The appellant shall attend the concerned police station once in a month , i.e., on first Saturday between 11.00 a.m. to 2.00 p.m. till conclusion of the trial.

[N.R.BORKAR, J.]