

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

Criminal Application No.6945 of 2014

Sanjay S/o Eknath Autade. **.. Applicant.**

Versus

The State of Maharashtra. **.. Respondent.**

Shri. Shashibhushan P. Deshmukh, Advocate, holding for
Shri. Mahesh S. Deshmukh, Advocate, applicant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent.

CORAM: T.V. NALAWADE, J.

DATE : 4th FEBRUARY 2015

ORDER:

1) The application is filed for bail. Both the sides
are heard. This Court has perused papers of investigation.

2) The incident in question took place on 19-1-
2014. There was some dispute between the deceased on
on side and the persons like Somnath Waikar, Raju
Panjabi, Ajay Davkhare, Sachin Bagul on the other. The
friends of deceased Raju Aher knew bout the enmity

between these boys and they also knew that these four boys were searching for opportunity to do something. On 19-1-2014 when Nitin Shelar, friend of the deceased and his friends were present at Jape plot situated near the house of the deceased, the aforesaid four boys came with their associates on four motor cycles. They were holding dangerous weapons like sword, chopper, iron pipes, iron rods etc. They rushed at the deceased and his friends. The friends somehow ran away but these boys assaulted the deceased by using aforesaid weapons. According to the witnesses, they knew assailants. They knew the names of only five. According to them, three boys whose names were not known to them were seen by them in past and they were in a position to identify them. They took names of 5 persons when they first narrated the incident to police. After the arrest of the persons named in the FIR, the present applicant and one more accused like Roshan Bhamble came to be arrested then supplementary statements of witnesses like Nitin Shelar, Amar Avhad, Akshay Tribhuvan, Dnyaneshwar Dalvi came to be recorded. After arrest of the present applicant on 11-2-2014, the applicant was shown to the witnesses in the

police station and the witnesses identified the present applicant and their supplementary statements came to be recorded.

3) Learned counsel for the applicant pointed out some mistakes committed in the recording of the statements under section 161 of the Code of Criminal Procedure by police. He pointed out that when the applicant came to be arrested on 11-2-2014 in the supplementary statement dated 12-2-2014 of Nitin Shelar the date of arrest of the present applicant was mentioned as 12-2-2014. The learned Additional Public Prosecutor submitted that supplementary statement of Akshay dated 30-1-2014 is in relation to Roshan Bhamble and not Sanjay, the present applicant and the supplementary statement of Akshay was recorded on 12-2-2014 i.e. after arrest of the present applicant. Thus, there are some mistakes in statements recorded under section 161 of the Code of Criminal Procedure but case diary is there.

4) Learned counsel for the applicant submitted that when Akshay Tribhuvan, witness gave supplementary

statement on 30-1-2014 present applicant was not arrested but in his supplementary statement Akshay had contended that he was shown and he had identified the present applicant. However, in the supplementary statement the date of arrest of present applicant is mentioned as 11-2-2014. Learned counsel pointed out that in the supplementary statement of Dnyaneshwar dated 30-1-2014 it is shown that he had identified the present applicant but in the statement also the date of arrest is shown as 11-2-2014. Similar mistake is committed in respect of supplementary statement of Dnyaneshwar Dalvi.

4) The learned Additional Public Prosecutor submitted as per the case diary in the supplementary statement dated 30-1-2014 Akshay Tribhuvan he had informed that he had identified the applicant.

5) The post mortem report shows that as many as 12 surface wounds and injuries were found on the person of the deceased which include, incised wound, stab injury, abrasions and CLW. They had caused fracture of ribs, of

left humerus and there was split lacerated wound on occipital scalp and the death took place due to multiple grievous injuries. The material collected against the applicant is sufficient to make out a strong prima facie case for offence punishable under sections 302, 34, 149 of Indian penal Code and also for offence under the Arms Act. The incident took place in a broad day light and the material collected shows that the assailants were not afraid of anybody.

6) The learned counsel for the applicant has placed reliance on following reported cases :

- (1) AIR 2003 SC 2577 (Lakhwindar Singh v. State of Punjab).**
- (2) AIR 1979 SC 1127 (Kanan v. State of Kerala).**

He submitted that when the aforesaid witnesses did not know the applicant, it was necessary for the investigating agency to hold test identification parade and collect the material which could have helped the prosecution during trial. He submitted that in absence of material of test identification parade it cannot be said that the

prosecution will be able to show that the aforesaid witnesses can identify or they have identified the accused. He also placed reliance on a case reported as **2013 (3) Bom. C.R. (Cri) 456 (Jilaniya Janglya Bhosale v. State of Maharashtra)** of this Court.

7) All the aforesaid cases are on the appreciation of evidence during trial. It is not the law that unless and until there is test identification parade, the witnesses cannot be believed. The record of test identification parade is created only to help the witnesses to identify the accused who were not known to them. In many cases witnesses know the accused, they can identify the accused though witnesses do not know them by names like in the present case and in such cases the test identification parade may not be that much necessary. When such witness gives evidence in Court it becomes the matter of appreciation of evidence for the Court and it is open to Court to hold as to whether such witness can be believed or not. Only due to absence of test identification parade the Court cannot go with the presumption that the witness is not telling the truth. Other many circumstances are

required to be considered by the Court and it can be said that the record of test identification parade can be only the supporting piece of evidence.

8) At the stage of consideration of bail application such circumstances cannot be considered. In view of the manner in which the offence is committed, the material discussed above and the part played by the applicant in the incident, this Court holds that it is not a fit case to grant bail to the applicant. There is possibility of tampering with the prosecution witnesses.

9) In the result, the application is rejected.

Sd/-
(T.V. NALAWADE, J.)

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