

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.549 OF 2015**

Akshay Pratap Kadam

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Jayant Joseph Bardeskar for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 21st AUGUST, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 115 of 2014 registered with the Rajgad Police Station, Pune, for the alleged offences punishable under Sections 302, 307, 120B, 143, 147, 148, 149, 291 and 427 of the Indian Penal Code, 1870 and under Sections 3(25), 4, 27 of the Arms Act.
3. The incident in question has taken place on 7th November, 2012. According to the prosecution, one Vinayak Kadam was assaulted by the applicant and other co-accused. It is also alleged that one of the co-accused fired a revolver at Vinayak Kadam. It is further alleged that a two-

wheeler came and dashed against the Balero, which was being driven by the complainant and another vehicle came and gave a dash to the vehicle driven by the complainant. It is alleged that 7 to 8 people armed with Koytas got down from the said Balero.

4. Learned Counsel for the applicant submits that the complainant Hrishikesh Khedkar has in his complaint/FIR dated 23rd June, 2014 stated that when the said incident occurred, he had seen the deceased being assaulted by Jivraj Kadam, Mauli Rajiwade, Pankaj Harish Rawat, Manish Subhash Kadam, Shubham Uttam Nikam, Rahul Gulab Walhekar, Babu Walhekar, Ajinkya Shinde and others, whose name and addresses were not known to him. He has stated that he has also seen one person firing in the direction of the deceased. According to the learned Counsel for the applicant, the name of the applicant appears for the first time, in the supplementary statement of the complainant, which was recorded on the next day. He submitted that in the said supplementary statement, the complainant has given a different story i.e. when the deceased was attacked, he ran and hid and saw Gajanan Kadam, Mauli Rajiwade, Shubham Nikam, Babu Walhekar, present applicant-Akshay Kadam,

Ajinkya Shinde assaulting the deceased Balaji with Koytas on his head, neck and back. According to him, the complainant in his 164 statement has given yet another version. In the said statement, he has stated that from the Balero car, Shubham Nikam, Mauli Rajiwade, present applicant-Akshay Kadam, Ajinkya Shinde, Pankaj Rawat and Manish Kadam got down, that they were armed with Koytas and that he saw Shubham Nikam, Mauli Rajiwade, present applicant-Akshay Kadam, Gajanan Kadam, Rahul Walhekar, Nitin Jhangulkar, Pankaj Rawat and Manish Kadam assaulting the deceased Balaji Kadam. He submitted that the co-accused Rahul Walhekar, Nitin Bhausahab @ Balasaheb Ingulkar, Pankaj Rawat and Manish Kadam have been enlarged on bail and that he too is entitled to be enlarged on bail on the ground of parity. According to him, the complainant had not disclosed the name of the applicant in the FIR, which was lodged soon after the incident and as such the applicant be enlarged on bail on the said ground as well as on the ground of parity.

5. Learned A.P.P does not dispute the fact that the some of the accused, who have been mentioned in the 164 statement, have been enlarged on bail.

6. Perused the charge-sheet and the statement of the complainant including the 164 statement. It appears that the applicant was not named in the FIR which was lodged on 23rd June, 2014 and that his name is included on 24th June, 2015 in the supplementary statement. There is no recovery at the instance of the applicant. The applicant is aged 19 years of age and has no antecedents. Some of the co-accused who have been named in the 164 statement have also been enlarged on bail by this Court as well as by the Sessions Court. Considering all the aforesaid facts, the applicant also deserves to be enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant Akshay Pratap Kadam be released on bail in connection with C.R. No. 115 of 2014 registered with the Rajgad Police Station, Pune on executing PR Bond in the sum of Rs. 15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall not tamper or attempt to contact any witness concerned with the case;
- (iii) The applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or

change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Rajgad Police Station, Pune;

(iv) The applicant to cooperate with the conduct of the trial;

(v) The applicant shall attend the Rajgad Police Station, Pune on the first Sunday of every month between 10:00 a.m. to 12:00 noon till the conclusion of the trial;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

7. It is made clear that the above observations 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.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.