

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.1017 OF 2015****IN****CRIMINAL APPEAL NO.238 OF 2015**

Anil Vitthal Kale and another ..Applicants.
versus

The State of Maharashtra ..Respondent.

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Mr. Rajiv Patil, Senior Advocate i/b Mr. Rahul S. Kate for the
Applicant.

Mr. A.S. Shitole, Addl.P.P. for the State.

Mr. Sachin R. Pawar for the Intervener / original complainant.

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CORAM : SMT V.K. TAHILRAMANI &
A.S. GADKARI, JJ.

3rd September, 2015.**P.C. :**

Heard learned senior advocate for the Applicants – original
accused Nos.1 and 2 and the learned APP for the State.

2. The Applicants along with co-accused Umesh have been
convicted under Section 302 read with Section 34 of the Indian
Penal Code for causing death of Jalindar Kale and Ganesh Kale.
In addition all the three accused have been convicted under
Section 307 read with Section 34 for causing injuries to P.W.1 –
Kiran, P.W.4 – Machindra and P.W.5 – Adinath. The Applicants are
now seeking bail.

3. There are three injured witnesses in the present case, P.W.1 - Kiran, P.W.4 - Machindra and P.W.5 - Adinath. Machindra has stated that the present Applicants along with co-accused Umesh came running. They were all abusing Ganesh and Jalinder. Applicant No.1 - Anil was holding a wooden log, Applicant No.2 - Sachin was holding an iron rod and co-accused Umesh was armed with a knife. Umesh inflicted blows with a knife on the left rib of Jalinder as well as on the left rib of Ganesh. Both of them collapsed. Then P.W.1 - Kiran rushed to pacify all the accused persons. Thereafter co-accused Umesh inflicted blows with knife on the left rib of Kiran. Then P.W.5 - Adinath tried to intervene. Thereafter co-accused Umesh inflicted blow with knife on the left rib of Adinath. Thereafter Applicant No.2 - Sachin inflicted blow with iron rod below left eye of Adinath. Thereafter Applicant No.1 - Anil inflicted blow with wooden log on the left eyebrow of Adinath. Machindra has stated that when he tried to intervene, Applicant No.2 - Sachin assaulted with iron rod on his head and Applicant No.1 - Anil inflicted blow with wooden log on his left hand, due to which his left hand was fractured. The evidence of all the three injured eye witnesses consistently shows that

Applicant No.1 - Anil was armed with wooden log, and other witnesses Applicant No.2 - Sachin was armed with iron rod and co-accused Umesh was armed with knife. After assault by Umesh on both deceased Jalinder and Ganesh, thereafter the Applicants assaulted on the witnesses especially P.W.4 - Machindra and P.W.5 - Adinath when they tried to intervene.

4. Mr. Patil, learned counsel for the Applicants submitted that in fact 3 to 4 unknown persons had assaulted Ganesh, Jalinder and the three injured witnesses and the Applicants and the co-accused have been falsely implicated in this case. In support of this contention, he has placed reliance on the evidence of D.W.1 - Mahesh and D.W.2 - Sanjay. Mr. Patil, submitted that the evidence of both these defence witnesses clearly shows that 3 to 4 unknown persons have assaulted the deceased as well as the injured witnesses. On perusal of the evidence of D.W.1 - Mahesh it is seen that he has stated that Kiran Kale (P.W.1) informed him that 3 to 4 unknown persons assaulted them by sharp weapons and ran away. The evidence of D.W.2 - Sanjay is on similar lines as that of D.W.1 - Mahesh. Thus, it is seen that Mahesh and Sanjay are not eye witnesses to the incident, but they had only

heard from some other person that unknown persons assaulted both the deceased and the three injured witnesses. It is pertinent to note that these witnesses state that Kale (P.W.1) told them that 3 to 4 unknown persons had assaulted all of them. However, P.W.1 - Kiran Kale has clearly stated that the Applicants and co-accused Umesh have assaulted the deceased and the injured witnesses in this case. Prima facie, nothing has been elicited in the cross examination of Kiran so as to disbelieve his testimony. In such case, prima facie we are not inclined to place any reliance on the evidence of the two defence witnesses.

5. It is seen that all the three accused including the two Applicants came to the spot armed with deadly weapons. Applicant No.1 - Anil was armed with wooden log, Applicant No.2 - Sachin was holding an iron rod and co-accused Umesh was armed with a knife. Both Applicant No.1 - Anil and Applicant No.2 - Sachin who were armed with deadly weapons were accompanying accused No.3 - Umesh who was armed with a knife right from the beginning. They all came running together from their house. It was known to Applicant Nos.1 and 2 that accused No.3 - Umesh was armed with a deadly weapon like

knife. Even after Umesh assaulted both the deceased, thereafter the injured witnesses like Machindra and Adinath tried to intervene, at that time both the Applicants assaulted Machindra and other witnesses like Adinath. All these facts show that both the Applicants shared the common intention of co-accused Umesh to cause the murder of Jalinder and Ganesh. In this view of the matter, we are not inclined to grant bail. The Application is rejected.

(A.S. Gadkari, J.)

(Smt. V.K. Tahilramani, J.)