

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2025 OF 2015**

Anil Tulsiram Gaikwad ...Applicant

Versus

The State of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO.1379 OF 2015**

Siddharth Datobha Gaikwad ...Applicant

Versus

The State of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO.2059 OF 2015**

Ashok Kondiba Waghmare & Ors. ...Applicants

Versus

The State of Maharashtra ...Respondent

.....

Mr. Ritesh Thobde for the Applicant in BA/2025/2015

Mr. V.V. Purwant for the Applicant in BA/1379/2015

Mr. V.V. Phatara for the Applicant in BA/2059/2015

Ms G.P. Mulekar, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 16th DECEMBER, 2015.

P. C. :

The Applicants herein were arrested in Crime No.150 of

2015 registered with Valsang police station, Solapur (Rural) for the offences punishable under sections 302, 307, 143, 147, 148, 149, 323, 504 and 506 of the IPC, have filed these applications by invoking powers of this Court under section 439 of the Criminal Procedure Code.

2. The case of the prosecution in brief is that on 5.6.2015 between 9.30 p.m. to 9.45 p.m. the Applicants alongwith the other co-accused formed unlawful assembly armed with deadly weapons and committed murder of one Saddam Hameed Noorewale and inflicted injuries on one Mohseen. Shri Ghudubai Huseni Mulla, father of the injured had lodged the FIR dated 5.6.2015. Pursuant to which, aforesaid crime came to be registered and the Applicants herein were arrested on 6.6.2015. The applications for bail filed by these Applicants were rejected by Sessions Court vide order dated 9.7.2015 and 16.9.2015. The Applicants have therefore, approached this Court to enlarge them on bail.

3. The learned counsels for the Applicants submitted that there is no prima facie material to show the involvement of the Applicants in committing the crime. They have further submitted that the complainant was not an eye witness and that the statement of the

injured does not indicate that the Applicants herein were involved in inflicting injuries either on him or on Saddam, the deceased.

4. The learned APP submits that the statements of the witnesses prima facie show the involvement of the Applicants in the offence. She has further submitted that the blood stained clothes of the Applicant -Ashok Waghmare were attached under panchanama. She has further submitted that there are criminal antecedents and hence, the Applicants are not entitled for bail.

5. I have perused the records and considered the submissions advanced by the learned counsels for the Applicants and the learned APP for the Respondent -State. The statement of the injured, who is a material witness prima facie indicates that on 4.6.2015 at about 9.00 to 9.30 p.m. when Mohsin had gone near Siddheshwar temple there was an altercation between him and the co-accused Rajkumar Gaikwad over playing of loud music. The injured witness has stated one Ashok Waghmare had intervened and told them not to quarrel among themselves. The statement of the injured further reveals that on 5.6.2015 at about 9.00 p.m. said co-accused Raj Kumar and his two brothers had come near his house and had quarreled with him over the incident of previous day. He has stated that he and Saddam had tried

to convince them and thereafter they had left the place. He had stated that on the same night he and Saddam had gone for a walk and reached near the house of accused Rajkumar Gaikwad, Shiva, the co-accused and his two brothers, the Applicants -Siddharth Gaikwad and 8 to 9 persons came towards them and that Datta Baliram Gaikwad and two others caught hold of him and Shiva had inflicted stab wound on his chest. He has further stated that said Shiva also caught hold of Saddam and that Shiva inflicted several stab wounds on said Saddam. He has further stated that two to three persons and accused Rajkumar had assaulted him with kicks and blows.

6. It may be mentioned here that father of the injured Ghudubhai Huseni had stated that the Applicants herein and other co-accused had assembled near his house and had abused his son Mohsin and his friend Saddam. He has further stated that when they had questioned them as to why they were abusing, the accused Shiva, who had come with a knife had inflicted stab wound on the chest of his son Mohsin and his friend -Saddam and that all the other persons had assaulted the Saddam (deceased) and said Mohsin by means of kicks and blows. He has stated that he had also sustained injury as a result of the said incident.

7. It is to be noted that the statement of the injured indicates that after the initial incident, the Applicants had only gathered at his house and had abused him and thereafter they had left the place of the incident and assault was taken place in front of the house of Rajkumar, when the injured and his friend Saddam had gone for a stroll.

8. The statement of the injured does not prima facie indicates that the Applicants Anil, Ashok, Kandhu and Shantkumar were present at the place of incident. Though he has stated that the Applicant Siddharth was present at the place of the incident, his statement does not indicate that he had committed any overt act.

9. The statement of the injured, who is a material witness, does not prima facie indicate that these Applicants, were involved in committing the said crime. The Applicants are in custody since 6.6.2015. The charge-sheet has already filed and considering the nature of the allegations against the Applicants, in my considered view the Applicants are no longer required in the custody. Even otherwise the Applicants are permanent residents of Solapur, and as such there is no possibility of the Applicants absconding.

10. Under these circumstances and in view of the discussion

supra, the applications are allowed on the following terms and conditions:-

- (I) The Applicants are ordered to be released on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand only) each with one or two sureties to the like amount to the satisfaction of the learned Sessions Judge, Solapur.
- (II) The Applicants shall not interfere with the complainant or the witnesses and shall not tamper with the evidence in any manner.
- (III) The Applicants shall attend the Sessions Court on each and every date of hearing.
- (IV) The Applicants shall stay away from the jurisdiction of Valsang Police Station, District-Solapur, for a period of three months.
- (V) The Applicants shall also furnish their addresses to the Investigating Officer. The Investigating Officer shall verify the same before release of the Applicants on bail.

(ANUJA PRABHUDESSAI, J.)