

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 624 OF 2016

Prashant Suresh Kamble

... Applicant.

Versus

The State of Maharashtra

... Respondent.

WITH

CRIMINAL BAIL APPLICATION NO. 790 OF 2016

Santosh Bhagwat Waghmare

... Applicant.

Versus

The State of Maharashtra

... Respondent.

Mr.S.V.Kotwal i/b. Mr.Avinash Kamkhedkar for
Applicant in BA/624/2016.

Mr.Raju M. Yamgar for Applicant in BA/790/2016.

Mr.Arfan Sait, Asst. Public Prosecutor for
Respondent-State in BA/624/2016.

Mr.Deepak Thakery, Asst. Public Prosecutor for
Respondent-State in BA/790/2016.

CORAM : A.M. BADAR, J.

DATED : 7TH JULY, 2016.

P.C. :

1] Applicants/accused in Crime No. 305 of 2014 for the offences punishable under Section 148, 149, 302, 307, 452, 504 read with 34 of Indian Penal Code and under Section 37(1) read with 135

of Bombay Police Act, by these applications are praying for releasing them on bail.

2] Heard the learned Counsel appearing for applicant Prakash Kamble in Bail Application No. 624 of 2016. By pointing out statements of Sunny Babu Prabhale, Nilkanthraj @ Papya Vyankat Mhetre and Anil Datta Sarode, the learned Counsel argued that the an iron rod is attributed to the present applicant. The learned Counsel pointed out statements of Akash Sontakke, Vinayak Kamble, Sahdeo Sarode and Rahul Prabhale and argued that these witnesses are also attributing rod to the present applicant. By pointing out the Postmortem Report, it is argued that deceased Mangesh Alte died because of incised wounds suffered by him. It is further argued that this cannot be said to be a case of common object because the incident in question is fall out of quarrel between informant Satyam Alte and one Shila Gore who is aunt of main accused Amar. My attention was drawn to FIR lodged by Shila Gore against Satyam vide Crime No. 285 of 2014 alleging outraging of her modesty by informant Satyam. Therefore in submission of the learned Counsel for the applicant, applicant is entitled for bail.

3] The learned Counsel for the applicant/accused Santosh Waghmare argued that though it is avert by the informant that the applicant is known to him, name of the applicant is not figuring in the First Information Report (FIR) and supplementary statement of the informant shows that on the basis of hearsay information, name of the applicant is implicated in the crime in question. The learned Counsel further argued that a stick is attributed to the present applicant and as the charge-sheet does not reflect common object, the applicant is entitled for bail.

4] The learned Asst. Public Prosecutor opposed the application by contending that the offence is serious and complicity of applicant is established in the offence punishable under Section 302 of IPC.

5] At the outset it needs to mention that liability of each member of unlawful assembly is explained in the judgment of the Hon'ble Apex Court in the matter of Masalti Vs. State of Uttar Pradesh reported in 1965 AIR 202. If it is shown that members of a unlawful assembly were having common object and they continued to be members of the said unlawful assembly, each and every individual

member of such unlawful assembly is vicariously liable for the acts done by other members.

6] In the case in hand, it appears that main accused Amar had grudge against informant Satyam, as Satyam had outraged modesty of his aunt Shila. However, how the incident in question happened is unfolded by statement of several witnesses including that of Sunny Prabhale. Statement of Sunny Prabhale, who is also injured in the incident in question goes to show that on 30.10.2014, at about 8.00 pm, accused Amar Chavan accompanied by co-accused including applicants Prashant Kamble and Santosh Waghmare questioned him as to whereabouts of Satyam. At that time, accused persons were armed with Koyata, iron rod and wooden locks. According to Sunny Prabhale accused persons then assaulted him. Injury certificate of Sunny Prabhale goes to show that he was injured in the assault. There are witnesses to vouch for this incident.

7] The charge-sheet shows that thereafter accused persons went towards house of Satyam Alte. Seeing them informant Satyam Alte escaped in a narrow lane. Thereafter, it is seen that accused persons including present applicant entered in the house of informant

Satyam Alte and committed murder of his brother Mangesh Alte. Postmortem Report shows that Mangesh died homicidal death with several injuries incised wounds on his dead body. Postmortem report also shows that haematoma was found under scalp of the dead body.

8] Charge-sheet contained statement of witnesses who are stating about accused persons entering in the house of the deceased armed with weapons.

9] Statement of witnesses *prima facie* goes to show that unlawful assembly was formed with common object and by indulging riot the assembly formed by accused persons committed murder of Mangesh Alte. As such individual role and weapon held by individual accused becomes insignificant. Even if name of applicant Santosh is not figuring in the FIR statement of eye witnesses *prima facie* shows that he was a member of unlawful assembly. Hence no case for bail is made out and therefore the order;

(a) The applications are rejected.

(A.M. BADAR, J.)