

vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1255 OF 2016

Atul Maruti Saste ..Applicant.

V/s.

State of Maharashtra ..Respondent.

CRIMINAL BAIL APPLICATION NO. 572 OF 2016

Bhanudas Nana Khomane ..Applicant.

V/s.

State of Maharashtra ..Respondent.

Mr. Prashant M. Patil, a/w Mr. Hrishikesh Giri, for the applicants in both applications.

Mr. Arfan Sait, APP for respondent-State.

Mr. Dev S.V. PSI, Jejuri Police Station, Pune City.

CORAM : A.M.BADAR, J.

DATED : 2nd AUGUST, 2016

P.C. :-

1. The applicant Atul Maruti Saste, in Application No.1255 of 2016 and applicant Bhanudas Nana Khomane, in Application No.572 of 2016, who are accused in crime No.26 of 2015, registered with police Station Jejuri, District, Pune, for the offence punishable under Sections 302, 120B, 201 read with 34 of the Indian Penal Code, at the instance of Prasad

Ashok Jadhav, by these applications are praying for releasing them on bail.

2. Heard the learned counsel appearing for applicants. He argued that the only evidence which is available against present applicants is that of statements of alleged eye witnesses Suresh Jagtap and Suresh Jadhav. The learned counsel argued that the incident happened in the night intervening 7.2.2015 and 8.2.2015; whereas statements of Suresh Jagtap and Suresh Jadhav came to be recorded on 23.4.2015. According to the learned counsel for applicants, these witnesses are got up witnesses. The learned counsel further argued that in the recovery panchnama, name of applicant Atul is shown as Atul Khomane and the Chemical Analyzer's report does not show that the rod recovered at his instance was stained with blood. The learned counsel further argued that confessional statement by co-accused Sultan Sayyed was retracted by him. This accused was, immediately handed over to police in police custody remand. Hence according to the learned counsel for applicants, considering the nature of evidence against them, they are entitled for bail.

3. The learned APP opposed the application by arguing that there is sufficient evidence to corroborate

testimony of Suresh Jagtap. My attention is drawn to statements of witnesses viz: Sachin Jadhav and Omkar Phadtare to show that at the time of alleged offence, both applicants and co-accused were present in the vicinity where the offence was committed and to reflect subsequent conduct of applicant Saste. The learned APP argued that as yet, the report of Chemical Analyzer is not received.

4. Perused the chargesheet. According to prosecution, applicants were having enmity with Ashok Bajirao Jadhav (since decease). The prosecution has alleged that in the night intervening 7.2.2016 and 8.2.2016, present applicants alongwith co-accused have murdered Ashok Bajirao Jadhav in the field located at Sakurde, Tatkarwadi road. During the course of investigation, statement of Suresh Dashrath Jagtap is recorded. He is stated to be an eye witness to the crime in question. In his statement recorded on 23.4.2015, he has stated to the Investigator that on 7.2.2015, he was present in his field Gat No.150 of village Sakurde. At about 9.20 p.m., he saw the present applicant and co-accused standing near bund of the field. This witness further stated that Ashok Bajirao Jadhav came, at that spot by the motorcycle. The accused Dhananjay stopped him. Thereafter accused persons caught

hold of and lifted Ashok Jadhav and took him to the field of Rajendra Jadhav. Therefore, according to version of Suresh Jagtap, applicant Atul Saste gave blow of some weapon on head of Ashok Jadhav; whereas rest of the accused persons had held limbs of Ashok Jadhav. This witness further stated that Kondiba Chavan had also assaulted Ashok Jadhav on the head. Thereafter, as per version of this witness, all accused persons left the spot by two motorcycles.

5. Statement of Sachin Jadhav was recorded on 23.4.2015. He stated that on 7.2.2015 at about 10.00 p.m. he was waiting for Ashok Eknath Jadhav near Jai Malhar Dhaba. At that time as per version of this witness, applicant Atul Saste, Kondiba Chavan and Bhanudas Khomane came on one motorcycle and they were followed by co-accused Dhananjay Nana Saste and Sultan Sayyed, on another motorcycle. This witness stated that all these five accused persons were in frightened condition and they proceeded by left wall of the said roadside eatery by concealing something in their hand.

6. The learned counsel for applicants criticized this evidence collected by the prosecution by arguing that statements of both these witnesses are recorded after 73 days from the date of the incident. The learned counsel further

argued that witness Suresh Jagtap is stated to be cousin of the informant and his conduct in not reporting the incident to the police goes to to show that he is a got up witness. The statement of Suresh Jadhav shows that he was in frightened condition because of the incident in question. He came forward when the tension in atmosphere of the village was released with passage of time. In the same manner statement of Sachin Jadhav reveals that because of this incident, there was atmosphere of fear in the village. It is argued that Sachin Jadhav is also relative of the deceased.

7. It is trite that belatedly recording any statement of witness is a factor which needs consideration at the time of the trial and that too after cross examining the witnesses, whose statements are recorded belatedly. On that aspect the cross examination of the investigator is also required in order to assess the quality of evidence of such witness. At this stage, when both the witnesses are giving same reasons for delay in recording their statements, their evidence before the Investigator cannot be jettisoned on the count of delay. Apart from this, it is seen that version of witness Suresh Jagtap gains corroboration from version of Sachin Jadhav. Witnesses Saurabh Bhosale and Sagar Bhosale are the students. Their

statements show that on 8.2.2015 applicant Atul Saste had been to their room and at that time Atul was seen to be under fear by these witnesses. This post event conduct is material. It is seen from the papers of investigation that iron rod stained with blood was seized at the instance of applicant Atul. The C.A. Report is stated to be awaited. In the recovery panchnama, name of the applicant is stated to as Atul Khomane. That appears to be just an error in writing name, consequences of which will have to be looked into after accessing oral evidence. In the result, there appears prima facie evidence to connect both the applicants to the crime in question which is punishable with life imprisonment or death penalty. As such no case for bail is made out. Applications, are, therefore, rejected.

8. Needless to mention that the observations in this order are prima facie observations, having no bearing on the trial.

(A.M.BADAR, J.)