

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

CRIMINAL BAIL APPLICATION NO. 1296 OF 2016

Shri Sopan Ravindra Shinde & 4 others. ... Applicants.

V/s.

The State of Maharashtra ... Respondent.

WITH

CRIMINAL BAIL APPLICATION NO. 1297 OF 2016

Shri Namdev Hanumant Shinde & Anr. ... Applicants.

V/s.

The State of Maharashtra ... Respondent.

Mr. Rahul S. Kate, Advocate for the Applicants in both BAs.

Mr. Arfan Sait, A.P.P. for the Respondent- State.

API- Mr. C. M. Yadav (Bhigwan Police Station) is present.

CORAM : A. M. BADAR, J.

DATE : 01st JULY, 2016

P.C. :

1 Applicants in both these bail applications are accused in Crime No. 83 of 2016 registered with Bhigwan Police Station, Dist. Pune for the offences punishable under sections 307, 143, 146, 148, 149, 323, 294, 504, 506 of the Indian Penal Code at the instance of informant-Vithal Baban

Dhale. By these applications, the applicants are praying for releasing them on bail.

2 Heard the learned counsel appearing for Applicants /accused in both the applications. By taking me through the entire FIR, the learned counsel for applicants argued that the incident happened in two parts and almost all the accused have stated to have assaulted the injured by means of fists and kick blows. It is further argued that considering the nature of the injuries, it cannot be said that the intention of all applicants/accused was to kill injured. No offence under section 307 of the Indian Penal Code is made out. It is further argued that there is cross FIR at the instance of one of the accused.

3 Learned APP opposed both the applications. He argued that after initial medical treatment, the injured was again required to be admitted to hospital for further medical treatment and he is discharged on 22nd June, 2016. According to the learned APP one of the accused is still absconding and the investigation is still at the threshold.

4 Perused the papers of investigation including the FIR as well as injury certificate. According to the prosecution case, injured Subhash @ Babu Appa Kale and informant-Vithal Dhale went to take back J.C.B. Machine. At that time initially

they were assaulted by means of fists and kick blows by the present applicants/accused. It seen that thereafter, the some more accused persons came to the spot and they have assaulted to the injured. According to the prosecution case, accused - Namdev Shinde had assaulted the injured on the head by means of a sword, whereas accused-Sopan Shinde had assaulted the injured by means of a tommy.

5 Perusal of the injury certificate of injured-Subhash Kale, shows that he had suffered a big incised wound on his head and he was required to be referred for CT scan of skull and brain. Medical officer recommended further neurological evaluation. Learned APP on instructions of the investigating officer has made a statement that till recently the injured was hospitalized. According to the prosecution case, accused persons formed unlawful assembly with common object of commission of crime and then the injured was assaulted by them. Considering the nature of the weapon used and the part of body chosen for the assault, it cannot said that at this stage that no offence under section 307 is made out. Record of investigation further shows common object of the applicant accused in the crime and, therefore, the applicants are vicariously liable for the act of members of the unlawful assembly. It is too early stage that the applicants are approaching this court for seeking bail. One of the accused is

still to be arrested. The investigation is at crucial stage. No case for bail is made out at this stage.

6 In the result, both the bail applications are rejected.

(A. M. BADAR, J.)

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