

Anand

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

BAIL APPLICATION No.2504 OF 2015

Somnath Baburao Chikne .Applicant

Vs.

The State of Maharashtra .Respondent

WITH

BAIL APPLICATION No.1911 OF 2015

Vikas Ramesh Khandekar .Applicant

Vs.

The State of Maharashtra .Respondent

WITH

BAIL APPLICATION No.412 OF 2016

Mukesh Rajendra Prasad Singh .Applicant

Vs.

The State of Maharashtra .Respondent

Mr.Anil G. Lala a/w. Ms Beerta Bajwa, Ms Monika Malkani, Ms Zehra Kanji i/b. Lalla & Lalla, Advocate, for the Applicants in B.A.Nos.2504 & 1911 of 2015

Mr.Abhaykumar Apte, Advocate, for the Applicant in B.A.No.412 of 2016

Mr.Arfa Sait, APP, for the Respondent – State in B.A.Nos.1911 & 412 of 2015

Smt.Veera Shinde, APP, for the Respondent – State in B.A.No.2504 of 2015

CORAM : REVATI MOHITE DERE, J.

DATE : 25.04.2016

P.C.

. Heard learned counsel for the Applicants and the learned APPs for the Respondent – State.

2. Since all these Applications arise out of the same C.R., they are being disposed of by a common order. By these Applications, the Applicants seek their enlargement on bail in connection with C.R.No.I-139 of 2014 registered with the Kamothe Police Station, Navi Mumbai, for the alleged offences punishable under Sections 120B, 302, 341 r/w.34 of the Indian Penal Code, under Section 7(27) of the Arms Act and under Section 37(1), 135 of the Bombay Police Act.

3. The alleged incident has taken place on 21.07.2014 at about 10.50 p.m. The Complainant

is one Ashok Mhaskar. He has alleged that when he was at home having dinner, his brother Anuksh Mhaskar was assaulted. According to the Complainant, on hearing someone call out his name, he came out and saw that some residents of his building had gathered and that his brother-Ankush was lying in an injured condition in a pool of blood. He has stated that Ankush had suffered several injuries and that his right wrist was severed. Ankush was taken to the M.G.M.Hospital, Kamothe, where he was declared dead. On 22.07.2014 at 1.40 p.m., the Complainant-Ashok Raghunath Mhaskar, brother of the deceased lodged an FIR as against unknown persons. During the course of investigation, 12 persons came to be arrested.

B.A.NO.2504 OF 2015

4. Mr.Lala, learned counsel for the Applicant submitted that the allegation against

the Applicant is that he assaulted the deceased Ankush with a vastara. He submitted that there are no eye witnesses who had seen the alleged assault by the accused, however, the same has come in the statement of the co-accused, which is inadmissible. He submitted that the presence of the Applicant at the spot is doubtful. According to him, co-accused Kiran Kanase, who is alleged to have procured the vastara which was allegedly used by the Applicant has been enlarged on bail.

5. Learned APP submitted that the Applicant has used a vastara in assaulting the deceased. She submitted that the deceased has suffered as many as nine injuries. She submitted that seven days prior to the incident, the present Applicant alongwith co-accused Vikas and Mukesh had done recce of the spot, where the alleged incident had taken place. She submitted that even on the date of the incident at about

10.30 p.m., the Applicant alongwith co-accused Vikas and Mukesh was present at the spot and that the said fact is supported by the CDRs. She submitted that there is a recovery of blood stained clothes at the instance of the Applicant. In addition, she submitted that there are six Crs which are registered as against the Applicant right from 2007 to 2014.

6. Perused the papers. There is a recovery of blood stained clothes at the instance of the Applicant. Although, the C.A.Report shows the blood group of the deceased as inconclusive, the fact remains that it was human blood. It also appears that there are CDR records which show that the Applicant was in touch with co-accused Vikas and Mukesh seven days prior to the incident i.e. from 15.07.2014, when recce of the location was done as well as on the date and time of the incident, when the alleged incident took place. Apart from this, the Applicant has

antecedents inasmuch as, there are six Crs registered against him.

7. Considering the same, this is not a fit case to enlarge the Applicant on bail. Accordingly, the Bail Application No.2504 of 2015 stands rejected.

B.A.NO.1911 OF 2015

8. Mr.Lala, learned counsel for the Applicant submitted that as far as the present Applicant is concerned, there is a recovery of blood stained iron pipe from an open place after almost two months of the incident. He submitted that there is a recovery of blood stained clothes, however, the C.A.Report does not show that there was any blood on the clothes which were seized at the instance of the Applicant.

9. Learned APP opposed the Bail Application. Mr.Sait, learned APP submitted that although the incident is of 22.07.2014, the Applicant was arrested only on 21.09.2014 after which the blood stained iron pipe was recovered at his instance on 24.09.2014. He submitted that the C.A.Report shows that the iron pipe which was seized was blood stained. He submitted that as the blood group of the deceased was inconclusive, the blood group on the iron pipe is only inconclusive. He submitted that there are CDR records which show that the present Applicant was in touch with co-accused Somnath and Mukesh prior to the incident and on the date and time of the incident.

10. Perused the papers.

11. There is recovery of a blood stained iron pipe at the instance of the Applicant. There are CDR records which show that the

Applicant was in touch with co-accused Somnath and Mukesh, prior to the incident when they had done recce of the said spot, as well as on the date and time of the incident. It also appears that one C.R. was also registered as against the Applicant in the year 2012 for an offence punishable under Section 302 r/w.34 of the Indian Penal Code. It appears that whilst on bail, the present offence is committed.

12. Considering the material on record, this is not a fit case to enlarge the Applicant on bail. Accordingly, the Bail Application No.1911 of 2015 stands rejected.

B.A.NO.412 OF 2016

13. Mr.Apte, learned counsel for the Applicant submitted that there are no eye witnesses and that the prosecution case rests on circumstantial evidence. He submitted that the

only evidence against the Applicant is recovery of a blood stained sword and clothes.

14. Learned APP opposed the Bail Application. He submitted that the Applicant had assaulted the deceased with the sword which had resulted in the wrist being severed. No doubt, it is true that there are no eye witnesses, but the fact remains that there is recovery of a blood stained sword and clothes at the instance of the Applicant. Since the blood group of the deceased is inconclusive, the C.A.Report shows that the blood on the sword as well as on the clothes of the Applicant is also inconclusive. As far as the present Applicant is concerned, there is one offence registered qua him in the year 2009 for the offences punishable under Sections 319, 402 of the Indian Penal Code, under Sections 3, 4(25) of the Arms Act and under Section 135, 37(1) of the Bombay Police Act. There are CDR records which clearly show

that the Applicant was in touch with co-accused Somnath and Vikas prior to the date of the incident when recce was done of the spot, as well as on the date of the incident when the deceased was assaulted by the Applicant.

15. Considering the material on record, this is not a fit case to enlarge the Applicant on bail. Accordingly, the Bail Application No.412 of 2016 stands rejected.

16. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order. The trial is expedited.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)