

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3303 OF 2017

AKSHAY S/O. SURESH GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondents: Mrs. R.P. Gour

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CORAM : V. K. JADHAV, J.
DATED : 7th AUGUST, 2017

PER COURT:-

1. The present application is filed for getting released on bail in connection with crime No. 72 of 2017, registered with M.I.D.C. Waluj, police station for the offences punishable under sections 302, 341, 504 r.w. 34 of I.P.C., Section 3(2) (5) of S.C. and S.T. (Prevention of Atrocities) Act and Section 135 of Maharashtra Police Act. The application filed by the applicant with similar prayer came to be rejected by the Special Judge, Aurangabad, vide order dated 09.06.2017 below Exh.4 in S.C. No. 134 of 2017.

2. On the basis of complaint lodged by one Ramesh Bhimrao Narwade, who happened to be elder brother of deceased Balu on 8.2.2017, the aforesaid crime came to be registered with the aforesaid police station and after due investigation, the police submitted charge sheet against the present applicant and others for

having committed murder of deceased Balu.

3. Learned counsel for the applicant submits that the name of the present applicant is not appearing in the complaint. The complainant has no personal knowledge about the incident. After three days of the incident, the so called eye witnesses improved their version and made the allegations against the present applicant to the affect that he caught hold the head of witness Sachin and as such, actively participated in the alleged crime. Learned counsel submits that the applicant is young boy taking education in H.S.C. Even during his detention in jail, he had appeared for the examination with permission of the Court.

4. Learned A.P.P. has strongly resisted the application on the ground that though the name of the applicant is not mentioned in the F.I.R., the eye witness Yogesh Namdeo Salve and Sachin Jogdand have stated in their statements about involvement of the applicant in the crime. During the course of investigation, those two witnesses have stated in their statements that initially there was quarrel between deceased Balu and accused Suresh Jadhav and in order to intervene in the matter, those two witnesses took deceased Balu on their motor cycle for taking him to his house. On way, the applicant alongwith said Suresh Jadhav and third accused came on his motor

cycle, obstructed their motor cycle and the main incident had taken place. These two witnesses have specifically stated in their respective police statements that accused No.1 Suresh Jadhav caught hold of the hands of associate Yogesh and the present applicant caught hold head of another associate Sachin and third accused Amol Jadhav inflicted blows on the chest of deceased Balu with the help of knife. Thereafter, these two witnesses got themselves released from the clutches of the present applicant and other accused and tried to save deceased Balu. However, at that time, original accused Suresh Jadhav took out the knife from accused Amol Jadhav and also inflicted the injuries on the chest and back of deceased Balu with the help of knife. Learned A.P.P. submits that, prima facie, there is evidence about involvement of the applicant in the crime. The charge-sheet also came to be filed against the applicant with the aid of section 34 of I.P.C.

5. On perusal of charge sheet, most particularly, statement of complainant and statement of those two witnesses Yogesh Salve and Sachin Jogdand, respectively, it appears that on 8.2.2017, Ramesh Narwade, who happened to be real brother of deceased Balu, has lodged complaint with the concerned police station after receiving information about the incident. On the basis of the information received, the complainant Ramesh Narwade has lodged

the complaint against accused No.1 Suresh Jadhav alone. However, on 10.2.2017, witnesses Yogesh Salve and Sachin Jogdand have stated in their respective statements about the involvement of the present applicant in the crime. They have stated in their respective statements that due to fear, they have not disclosed about the involvement of the present applicant in the crime. However, on careful perusal of their statements, it appears that so far as the main incident of assault on the person of deceased Balu is concerned, no specific role is attributed to the applicant. Accused Amol Jadhav inflicted blows on the chest of deceased Balu with the help of knife and thereafter accused Suresh Jadhav inflicted blows on the person of deceased Balu by using the same knife. However, there are no such allegations made against the present applicant. During the course of investigation, though the motor cycle owned by the applicant came to be seized, it cannot be said that the present applicant by using his motor cycle actively participated in the crime. The applicant is young boy taking education. His antecedents are clear. He is not likely to be absconded. He has fixed place of residence and will be easily available for trial. Even there is no apprehension of tampering with the prosecution evidence. The case of the applicant is different as compared to other accused persons. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby allowed.
- II. The applicant Akshay Suresh Gaikwad, be released on bail on his furnishing personal bond of Rs.50,000/- with one surety in the like amount, on the following conditions:-
 - a) The applicant shall not tamper with the prosecution evidence, in any manner.
 - b) The applicant shall attend the concerned police station twice in a week i.e. on every Monday and Friday between 9.00 a.m. to 11.00 a.m. for three months from today.
- III. Criminal application is accordingly disposed of.

(V. K. JADHAV, J.)

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