

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.86 OF 2017
IN
CRIMINAL APPEAL NO.50 OF 2017**

Bhagwan @ Bhavesh Bhiku Kadam & Ors.)...Applicants

**V/s.
State Of Maharashtra & Anr.)...Respondents**

Mr. V.D.Upadhyay, Advocate for the Applicants.

Ms. A.A.Takalkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 24th FEBRUARY 2017.

P.C. :

This application is for suspension of sentence and releasing the Applicants/Accused on bail during the pendency of the appeal filed by them.

2 Heard learned appearing for the Applicants-Accused. He argued that all the Applicants-Accused are falsely implicated in the crime in question. He further argued that PW.7-Chirag Meghani was in fact no eye witness to the incident in question. As his statement was recorded after three days, the learned trial

Court has not placed reliance on his statement. In submission of the learned Advocate appearing for the Applicants-Accused, Applicants are falsely implicated in the crime in question because of past incident. He, therefore, prays for suspension of sentence and release of the Applicants on bail. He further argues that weapons of offence are also not recovered from the Applicants-Accused.

3 As against this, according to the learned APP, evidence of injured witness Pravin Shetye is clear and pointed out role played by the Applicants-Accused in crime in question. The learned APP further argued that P.W.7-Chirag is eye witness to the incident in question. His evidence is consistent with the injured witness. The learned APP by taking me through the evidence of P.W.10-Dr. Vaibhav Lokhande argued that there is evidence of commission of offence punishable under Section 307 of IPC. By pointing out evidence of P.W.5-Arun Jaiswal, the learned APP argued that there is seizure of weapon of offence from the Applicants-Accused persons.

4 I have carefully considered the rival submissions and also perused deposition of witnesses. P.W.1-Pravin Shetty is injured victim of the crime in question. It is in his evidence that on 20.10.2003, all the Applicants accosted him when he was proceeding by motor-cycle. Thereafter, Applicant Nos.1 to 3 assaulted him by means of sticks and chopper. Injured witness further stated that apart from 3 named applicants, there were two unknown accused persons, who also assaulted him. Injured P.W.1-Pravin Shetty has identified the Applicants while in the dock as his assailants.

5 P.W.10-Dr. Vaibhav Lokhande, General Surgeon of Lifeline Hospital, Khopat had examined P.W.1-Pradip Shetty soon after the incident. The following injuries were found on the person of P.W.1-Pradip Shetty during his examination by P.W.10-Dr. Vaibhav Lokhande :

“a) Multiple incise wound over scalp-

1) Occipital region 6 cm x 2 cm x $\frac{1}{2}$ cm grievous injury.

2) Parietal region on left side 5 cm x 2 cm x $\frac{1}{2}$ cm

- 3) Parietal region on left side 3 cm x 2 cm x ½ cm
- 4) Parietal region on right side 2 cm x 2 cm x ½ cm
- 5) Abrasion on right knee 5 cm x 4 cm
- 6) Trauma on left calf – tense swelling”

Medical officer has opined that injuries found on the person of P.W.1-Pradip Shetty are possible by seized weapons.

6 Choice of weapons, force with which blows were dealt with and parts of body chosen for causing wounds, prima-facie, reflects intention of the Applicants-Accused. Injuries were caused on vital parts of the body, i.e. head. If while attempting to commit murder, hurt is caused then the punishment can be upto life imprisonment. Prima-facie, it is seen that undue leniency is shown by the trial Court while imposing punishment.

7 Be that as it may, considering the nature of offence and the circumstances in which it was committed, I am not inclined to grant bail to the Applicants-Accused by suspending their sentence.

However, hearing of the appeal is expedited. Therefore, the order:

- (1) Application is rejected.
- (2) Hearing of the appeal is expedited.
- (3) Liberty is given to mention for final hearing after preparation of paper-book.

(A. M. BADAR, J.)