

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1369 OF 2017

Akash Ramavtar Zhanjorkar ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

WITH

BAIL APPLICATION NO.202 OF 2017

Harshal Manohar Bendre ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

WITH

BAIL APPLICATION NO.1375 OF 2017

Manoj Ramesh Karotiya ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Aniket Nikam i/b. Aashish Satpute, Advocate for the Applicant in BA/1369/2017.

Mr.Amey Deshpande, Advocate for the Applicant in BA/202/2017.

Mr.Viral Rathod i/b. Mr.Sunil D. Tiwari, Advocate for the Applicant in BA/1375/2017.

Ms.Veera Shinde, APP for the Respondent/State.

Mr.Suresh Aher, PI, Ulhasnagar Police Station is present in person.

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CORAM : A.M.BADAR J.

DATED : 16th NOVEMBER 2017.

P.C. :

1 Applicant Akash Ramavtar Zhanjorkar (Bail Application No.1369 of 2017), applicant Manoj Ramesh Karotiya (Bail Application 1375 of 2017) and applicant Harshal Manohar Bendre (Bail Application 202 of 2017) are accused in Crime No.I-97 of 2016 registered with Ulhasnagar Police Station for offences punishable under Sections 302, 120-B, 143, 144, 147, 148, 149 201 and 506(II) of the Indian Penal Code, under Section 4 read with Section 25 of the Indian Arms Act as well as under Sections 37 and 135 of the Maharashtra Police Act. By these applications, they are seeking their release on bail during pendency of the trial after filing of the charge-sheet.

2 Heard the learned Advocate appearing for applicant Akash Zhanjorkar. He drew my attention to the FIR lodged by Gautam Surwade to point out that applicant Akash Zhanjorkar is not named in the FIR, but is named in the supplementary statement of the First Informant. The learned Advocate further drew my attention to statement of Santosh Jawale, the only another eye witness, to point out that statement of this witness is recorded on the fifth day after the incident. In his first version, Santosh Jawale has not named the present applicant as one of the assailant. However, as shown in the supplementary statement of

the very same day, this eye witness Santosh Jawale has named applicant Akash Zhanjorkar as one of the assailant. The advocate for the applicant argued that supplementary statement of First Informant and that of Santosh Jawale are replica of each other but for minor variations.

3 The learned Advocate appearing for applicant Akash Zhanjorkar further argued that arrest panchanama starting from 4.25 p.m. of 11/05/2016 shows that at the time of his arrest, there were blood stains on shirt of Akash, but the charge-sheet shows that within few minutes therefrom another arrest panchanama showing arrest of applicant Akash came to be drawn and that arrest panchanama of the same date starting from 4.40 p.m., does not show that there were stains of blood on shirt of applicant Akash.

4 The learned Advocate further argued that it is shown in the supplementary statement of two eye-witnesses including the First Informant that applicant Akash was holding chopper and warding of the passersby. The charge-sheet reveals that under his confessional statement iron bar with no blood stains came to be recovered.

5 The learned Advocate for Applicant Akash Zhanjorkar further argued that statement of Kalabai – mother of the deceased

shows that after the deceased left with main accused Sabhya @ Samadham Bagul on a motorcycle, Kalabai questioned First Informant Gautam Surwade as to why deceased Dipak was permitted to go with main accused Sabhya @ Samadhan Bagul. By comparing this statement of Kalabai, the learned Advocate argued that the FIR of Gautam shows that deceased Dipak left with Sabhya and along with him First Informant Gautam and witness Santosh left. This, according to the learned Advocate, amounts to contrary version of witnesses making case of the prosecution suspects. It is further argued that statement of Ravi Shetty does not show that applicant Akash Zhanjorkar had, in any manner, attempted to settle the issue between deceased Dipak Sansare and accused Sabhya @ Samadhan Bagul as well as Sajan Tak.

6 The learned Advocate appearing for applicant Manoj Karotiya argued that statement of Ravi Shetty does not disclose that applicant Manoj was privy to the settlement talk between deceased and accused Sabhya @ Samadhan Bagul. There is no recovery of weapon from applicant Manoj. At the time of his arrest, clothes of Manoj were not found stained with blood. The learned Advocate further argued that statement of Dilip Mishra shows that Sajan Tak was assaulted in past by deceased Dipak Sansare and his associates. Applicant Manoj was not concerned with that incident or talks of settlement in that regard. The

learned Advocate submitted that applicant Manoj is falsely implicated in the crime in question because, as per statement of Kalabai (mother of deceased Dipak Sansare), six months prior to the incident, there was fight between her another son named Ravi Sansare and applicant Manoj, which has resulted in registration of offences against both of them. Then the complaint was filed to all higher officers of the Police Department which seems to be the cause of implicating the applicant falsely in the crime in question, though he is not even resident of the locality, where the incident took place.

7 I have also heard the learned Advocate appearing for applicant Harshal Bendre. He argued that not a single sword is recovered from any of the accused by the Investigator, though it is alleged that several accused persons were holding swords. It is further pointed out that clothes of applicant Harshal were not found stained with blood at the time of his arrest. The learned Advocate further argued that Harshal was working as bodyguard with one Vaibhav Gaikwad, who is cited as witness for the prosecution. Statements of Vaibhav Gaikwad, Sameer Petkar, Rahul Korade etc. show that at the relevant time, applicant Harshal Bendre was with them. Even CCTV footage panchanama drawn by the Investigator shows that the applicant Harshal was not at the scene of occurrence as his image was captured in the CCTV footage of 10/05/2016 from 20:04:30 hours to 22:04:40

hours, as he was in the office of his employer Vaibhav Gaikwad. He then returned back to the office after attending the function with his employer at 22:52:20 hours. The learned Advocate further argued that statement of Santosh Jawale recorded under Section 164 of the Code does not show name of the present applicant as assailant. The applicant is falsely implicated in the crime in question as he is the witness to the incident of assault on Sajan Tak by deceased Dipak Sansare and his associates. Ravi Sansare – brother of deceased Dipak Sansare was detained in prison for a period of about six months as per version of his mother Kalabai. For this reason, applicant Harshal is falsely implicated in the crime in question.

8 The learned Additional Public Prosecutor submitted that in the supplementary statement, so also in the statement under Section 164 of the Code of the First Informant Gautam Surwade, name of accused persons are there.

9 I have carefully considered the rival submissions and also perused the entire charge-sheet.

10 At about 10.15 p.m. of 10/05/2016, near Kala Palace bungalow, Madhuban road, Dipak Sansare was done to death by accused persons. One cannot dispute the fact that Dipak Sansare died homicidal death and postmortem report annexed to the

charge-sheet shows that there were as much as 19 injuries in the nature of contused lacerated wound, incised wound, stab wounds, etc. including cut throat injury on the dead body of Dipak Sansare.

11 The FIR of the crime in question is lodged by Gautam Surwade immediately on 11/05/2016 at about 1.30 p.m. The FIR lodged by Gautam, statement of Kalabai – mother of deceased Dipak Sansare, statement of Ravi Shetty, Dilip Mishra and other prosecution witnesses recorded by the Investigator show that prior to the incident of commission of murder of Dipak Sansare, said Dipak Sansare along with associates had assaulted Sajan Tak causing severe damage to kidney of Sajan Tak requiring money for his medical treatment. Statements of witnesses further show that there were talks of settlement going on between the prosecuting party and the accused party and the accused party was demanding money from Dipak Sansare for medical treatment of Sajan Tak.

12 FIR lodged by Gautam Surwade soon after the incident which, according to the prosecution case, took place on 10/05/2016 shows that First Informant Gautam was asked by Dipak Sansare (since deceased) to bring his shoes from his house to a place near road side eatery of Ulhasnagar. First Informant Gautam Surwade obliged. When he came on the spot with shoes of Dipak Sansare, he had found Dipak and Santosh Jawale standing at the area known as '*parking of mama*'. First Informant

Gautam further reported that then there were two telephonic calls to Dipak from main accused Sabhya @ Samadhan Bagul. Thereafter, Sabhya @ Samadhan Bagul and Gautam Sharandour (both accused in this case) came on the motorcycle. Then, by that motorcycle, accused Sabhya @ Samadhan Bagul, accused Gautam Sharandour and Dipak Sansare (since deceased) went towards a area called as '*gol maidan*'. First Informant Gautam further reported that then he as well as Santosh Jawale proceeded to *gol maidan* area by Aactiva motorcycle of Santosh Jawale. This categorical averment in the FIR does not allow me to conclude that version of Kalabai Sansare is contradictory to the FIR because First Informant Gautam, in fact, had been to the house of Kalabai for taking shoes of Dipak Sansare as per directions of Dipak.

13 The FIR further reflects that Gautam Surwade and witness Santosh Jawale actually witnessed the incident. First Informant Gautam stated that he had seen accused Sabhya holding chopper and accused Gautam, accused Sajan and accused Harshal Bendre holding swords. They were assaulting Dipak Sansare. As per version of First Informant, at the time of the incident, Manoj Karotiya (applicant), Darpan Karotiya, Babu Karotiya and Sunil Karotiya were assaulting Dipak Sansare by means of iron rods. There was rush of people at that place, but nobody attempted to save Dipak because of terror of the assailants.

14 In the First Information Report, First Informant Gautam had not named applicant Akash Zhanjorkar. His supplementary statement was then recorded on 11/05/2016, in which he added some other persons as assailant of Dipak Sansare. First Informant Gautam in his supplementary statement has stated that apart from assailants named in the FIR, he had seen Sumit @ Suraj, Ajit @ Aaju Chandaliya, Akash Zhanjorkar Vishal Valmiki on the spot and they had also assaulted Dipak Sansare. Supplementary statement of Gautam further reflects that applicant Akash and co-accused Vishal were holding chopper and they were preventing the passersby from intervening in the incident of assault.

15 The FIR itself shows that First Informant Gautam was accompanied by witness Santosh Jawale. Though, it is expected from the Investigator to record statement of witness Santosh Jawale immediately, it is seen that his statement is recorded after five days of the incident i.e. on 15/05/2016. In his statement under Section 161 of the Code recorded on 15/05/2016, in tune with the FIR lodged by Gautam, Santosh has disclosed that Dipak Sansare was assaulted by assailants named Sabhya, Gautam Sharandour, Sajan Tak, Harshal Bendre, Manoj Karotiya, Darpan Karotiya, Babu Karotiya and Sunil Karotiya. Eye-witness Santosh Jawale in his statement recorded after five days had not named applicant Akash Zhanjorkar as one of the assailant.

16 It is seen that in a fashion similar to the recording supplementary statement of First Informant Gautam, supplementary statement of eye-witness Santosh Jawale came to be recorded subsequent to recording of his statement, but on the same day. This supplementary statement of Santosh Jawale, as stated by the learned Advocate for the applicant Akash Zhanjorkar, is virtually replica of supplementary statement of First Informant Gautam Surwade. In similar manner, in his supplementary statement, Santosh Jawale has come up with additional version that at the time of the incident, apart from persons named by him in his earlier statement under Section 161 of the Code, other persons named Sumit @ Suraj, Ajit @ Aaju Chandaliya, Akash Zhanjorkar and Vishal Valmiki were present at the scene of occurrence and they had also assaulted Dipak Sansare. Supplementary statement of Santosh shows that applicant Akash Zhanjorkar and Vishal were holding choppers and warding of the passersby.

17 Arrest of applicants Akash Zhanjorkar and Harshal is reflected from two panchnamas of same date i.e. 11/05/2016. One came to be recorded at 4.25 p.m. and completed on 5.20 p.m. in which shirt of Akash Zhanjorkar is shown to have been stained with blood. But the other panchanama starting on 4.40 p.m. to 5.15 p.m. does not show that his shirt was stained with blood.

18 So far as applicant Manoj Karotiya and applicant Harshal Bendre are concerned, first version of the incident coming on record from the mouth of First Informant Gautam, similarly first statement of eye-witness Santosh Jawale show that they were at the scene of occurrence at the time of the incident and they had actually assaulted Dipak Sansare. In fact, it is seen from the charge-sheet that the prosecuting party as well as the accused party were on inimical terms because of assault on Sajan Tak – member of the accused party by deceased Dipak Sansare. The enmity is always a double edged weapon. It gives motive for commission of crime and at the same time, it also indicates that there are chances of false implication because of rivalry between the parties. However, at pre-trial stage, it is difficult to conclude that applicant Manoj Karotiya and Harshal Bendre are falsely implicated in the crime in question. Plea of alibi is required to be proved at the time of the trial and, therefore, CCTV footage as well as statement of other witnesses cannot be given overbearing importance in the light of consistent statements of eye-witnesses implicating applicant Manoj Karotiya and applicant Harshal Bendre in the crime in question which is for the offence punishable with either life or death sentence.

19 In the light of foregoing discussion, the following Order :

- (i) Bail Application No.1369 of 2017 is allowed.

- (ii) The applicant/accused Akash Zhanjorkar in Crime No.I-97 of 2016 registered with Ulhasnagar Police Station for offences punishable under Sections 302, 120-B, 143, 144, 147, 148, 149 201 and 506(II) of the Indian Penal Code, under Sections 4 read with Section 25 of the Indian Arms Act as well as under Section 37(1) and 135 of the Maharashtra Police Act, is directed to be released on bail on his executing P.R. Bond in the sum of Rs.30,000/- and on furnishing one or two solvent surety in the like amount.
- (iii) As a condition of this Order, the applicant Akash Zhanjorkar shall not tamper with the prosecution evidence.
- (iv) The applicant Akash Zhanjorkar shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.
- (v) The applicant Akash Zhanjorkar should not commit any crime in future and he should cooperate the trial Court for expeditious disposal of the trial against him.
- (vi) Bail Application Nos.1375 of 2017 and Bail Application No.202 of 2017 are rejected.

(vii) Needless to mention that observations made in the foregoing paragraphs are *prima facie* in nature and have no bearings on the trial.

(A.M.BADAR J.)