

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1676 OF 2017**

Mayur Ashok Bhore	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ashish Raghuvanshi with Mr. A.H.H. Ponda for the Applicant

Ms. J. S. Lohakare, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 7th SEPTEMBER, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-83 of 2016 registered with the Vikramgad Police Station, Palghar, for the alleged offences punishable under Sections 302, 143, 148 and 149 of the Indian Penal Code.
3. Learned Counsel for the applicant submits that the applicant has been falsely implicated in the said case. He submits that the complainant – Balkrushna Gaikwad is not an eye-witness to the incident.

He submits that though the incident is alleged to have taken place on 11th November, 2016, the FIR was lodged only on 16th November, 2016. According to the learned Counsel, the history given to the doctors was for injury due to fall from bike near Village Kurze, Vikramgad. He submits that the said history was given by the complainant himself. He submits that although Prasad Bhanushali is alleged to have seen the assault, on Swapnil and deceased Rohit, his statement was recorded belatedly i.e. on 16th November, 2016, after almost 5 days. He further submits that the injury certificate of Swapnil, who is alleged to have been assaulted by the applicant with a stone, is not on record. He further submits that the deceased has sustained only one injury on his head and the same is consistent with the history of fall from bike. He further submits that the prosecution case, that the deceased was assaulted because of the love affair between Kamini and the deceased, is also belied from Kamini's statement. He further submits that applicant, aged 19 years and a student, has no antecedents.

4. Learned A.P.P opposes the application.

5. Perused the papers. Admittedly, the complainant – Balkrushna Gaikwad is not an eye-witness to the incident. Infact, even injured Swapnil is not an eye-witness to the incident of assault on deceased-Rohit. According to the complainant, the incident took place on 11th November, 2016 at about 10:30 p.m. It is alleged by the complainant, that on 11th November, 2016, Rohit (deceased) and Swapnil had been to village Moh Budruk alongwith a procession. It is alleged that Rohit and Swapnil were having relations with a lady of Village Moh Budruk and that some persons from the said village had kept a watch on them. A perusal of the several statements recorded of the complainant show, that he is not an eye-witness to the incident. He has only seen a wooden stick lying on the spot, where Rohit was found injured. It appears that Rohit was taken to the Criticare Superspeciality Hospital, Thane, where the injury is stated to be due to 'fall from bike'. Even in the medical case papers, at page 64, 'the alleged history of road traffic accident leading to head injury' is stated. The statement of the complainant was recorded only on 16th November, 2016. Injured-Swapnil is also not an eye-witness to the assault on Rohit (deceased), although he has alleged that the applicant assaulted him with a stone. Swapnil's injury certificate is not on record. The sole eye-witness

Prasad Bhanushali's statement was recorded on 16th November, 2016 after almost 5 days of the incident, in which, he has stated that the applicant assaulted Swapnil with a stone and Rohit with a wooden stick. It appears from the post-mortem report that the applicant had suffered one injury on his head and the cause of death is stated to be death due to head injury. The applicant is about 19 years of age. Investigation is complete and charge-sheet is filed. The applicant has no antecedent.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 11:00 a.m. to 12:00 noon, till the framing of charge;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person

concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial.

7. The application is accordingly disposed of.

8. 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.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.