

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

BAIL APPLICATION NO.2191 OF 2016

Prashant Suresh Kamble

... Applicant

Vs.

The State of Maharashtra

.. Respondent

Ms.Anjali Patil for the Applicant

Mr.Vinod Chate, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 17, 2017

P.C. :

1. This application is moved for bail as the applicant/accused is prosecuted for the offences punishable under sections 302, 307, 452, 143, 147, 148, 149, 504 of the Indian Penal Code and under sections 37(1) and 135 of the Mumbai Police Act.

2. One Satyam Alte gave complaint on 30.10.2014 that 20 to 25 days prior to the date of the FIR, the co-accused Amar Chavan had threatened him of his life on account of his altercations with sister in law of Amar Chavan. However, on 30.10.2014, when he was proceeding to his house, he noticed Amar Chavan, the

applicant/accused Prashant Kamble and other 5 to 7 persons armed with weapons like sickle, sticks and iron rods, entered the his house and so he ran away and hid in an adjacent lane of the house. He heard shouts of his brother Mangesh from the house. After some time, he went in the house and found that his brother Mangesh was injured. On query, the brother told him that Amar Chavan, the applicant/accused Prashant Kamble and 6 to 7 unknown persons entered the house with weapons and Amar Chavan enquired about Satyam and assaulted him with sickle on his head and back and as he shouted, they ran away. Mangesh was shifted to hospital at that time. It is also the case of the prosecution that in the assault, other two person i.e., Sunny Prabale and Rahul Prabale were also assaulted by the accused persons. Mangesh succumbed to the injuries on 31.10.2014 and the applicant/accused Prashant Kamble was arrested on 1.11.2014. Hence, this Bail Application.

3. The learned Counsel for the applicant/accused has submitted that the applicant/accused has not assaulted the deceased and vital blows were given by Amar Chavan with sickle. As per the case of the prosecution, the applicant/accused was

holding iron rod and he did not assault Mangesh. She relied on the statements of Satyam Alte, who has stated that Mangesh told him that Amar Chavan had assaulted him. She further submitted that the incident is not witnessed by any person. There is no evidence to show that the applicant/accused has assaulted Mangesh. As per the case of the prosecution, the persons who are attributed the role of assaulting them by the applicant/accused Prashant Kamble, have sustained simple injuries and thus, there is no evidence against the applicant/accused. It is also submitted that chargesheet is filed in December, 2014 and he is to be bailed out.

4. Learned Prosecutor has pointed out that apart from the statement of Satyam, Sunny Prabale, Neelkant Mhetre and Anil Kulkarni have stated that the applicant/accused has assaulted the deceased Mangesh with iron rod.

5. Perused the statements of the complainant and the witnesses as also the postmortem notes. The cause of death of the deceased is head injury. However, viscera was preserved. The two injuries are mentioned on the head and five injuries are sustained to brain. The statements of the complainant and the other 6 to 7 witnesses disclose that the applicant/accused

alongwith Amar Chavan and other accused arrived near the house of the deceased, armed with weapons. A specific role is attributed to the applicant/accused that he was holding iron rod. From the statements of Neelkant Mhetre and Anil, it shows that Amar Chavan assaulted Mangesh with sickle and the applicant/accused assaulted Mangesh with iron rod.

6. In view of the evidence of the witnesses before the Court attributing specific role to the applicant/accused, the motive as also the manner in which the pre-meditated assault is committed, prima facie, I am of the view that there is evidence against the applicant/accused and hence, the Bail Application is rejected.

7. At the request of the learned Counsel for the applicant/accused permission is given to the applicant/accused to move a fresh application after 31.1.2018, if the trial is not commenced. The learned Sessions Judge to endeavour to expedite the trial.

8. Bail Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)