

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

CRIMINAL BAIL APPLICATION NO. 1237 OF 2018

Shubham Ramesh Chavan ... Applicant
Vs.
The State of Maharashtra ... Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 1239 OF 2018

Jitendra Chandrakant Tekale ... Applicant
Vs.
The State of Maharashtra & Anr. ... Respondents

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Mr. Rajiv Patil, Sr. Advocate i/by Mr. Hasan Patel for applicant in both applications.

Mr. Y.Y. Dabke, APP for the Respondent-State in BA No. 1237 of 2018.

Mr. A.R. Kapadnis, APP for the Respondent-State in BA No. 1239 of 2018.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 3rd OCTOBER, 2018.**

P.C.

1. Applicants in both these applications were arrested in C.R. No. I-176 of 2017 for the offences punishable under Sections 302, 307, 143, 147, 148, 149 of Indian Penal Code and Section 37(1), 135 of Maharashtra Police Act.

2. The FIR was registered on 17th April, 2017. The applicants were arrested on 18th April, 2017. Investigation is completed and the chargesheet has been filed on 11th July, 2017.

3. The prosecution case is that the complainant is wife of the deceased. Her deceased husband was working as a driver. On 16th April, 2017, the complainant husband received a call from his employer that he has to go to Pune to deliver goods. Accordingly, he left for Pune saying that he would return by 5 p.m. The complainant thereafter called her husband as he did not return, he replied that he would come around 9 p.m. Thereafter she tried to contact him but his phone was switched off. Thereafter, in the midnight the police constable from Narpoli Police Station came to the complainant's house and inquired if any person from her house is missing. He also informed that one person is lying in injured condition near Ganesh Mandir and he gave his name as Balkrishna Sonne. She reached the spot. She saw her husband lying injured condition. Injured took the names of Jitendra Tekale, Abijit Tekale and Shubham Chavan as assailants. It is alleged that there was quarrel between accused and the deceased on the property issue and wife of the accused Jitendra Tekale had lodged the complaint against her husband. Subsequently, injured was declared dead.

4. Learned counsel for the applicant submitted that applicants were falsely implicated in this case. Co-accused namely Dakshata Tekale, Praveen Bansode, Rohit Madhukar Pawar, Nitin @ Bapya

Gaikwad, Abhijeet Tekale preferred applications for bail and they were released on bail by this Court. It is submitted that no role of assault by weapon is attributed to applicant in B.A. No. 1237 of 2018. Said applicant has been named by the eye witnesses and he has not assigned any specific overt act of assaulting the deceased. The police instead of hospitalising the injured person had come to inform the complainant that her husband is lying in an injured condition which creates doubt about the version of the complainant. The applicant in B.A. No.1237 of 2018 is a student and there is no recovery at his instance. He is also entitled for parity. It is submitted that prosecution case is that all the accused had assaulted the deceased. The other accused who had participated in assault are granted bail. It is further submitted that eye witness Rekha Chaudhary had stated that she has seen the applicant in B.A. No. 1239 of 2018 Jitendra Tekale, Abhijit Tekale, Bapya Gaikwad and others assaulting the deceased. Jitendra Tekale was allegedly armed with washing bat and not any sharp weapon. All accused were assaulting injured. She had purportedly seen the incident at mid night from far away distance. The other eye witness Alpesh Choudhary did not inform the incident to the police or his neighbours about assault. Their

version creates doubt. Accused are implicated in this case to settle the personal rivalry. It is submitted that taking the prosecution case as it is it cannot be said that there was intention to commit murder. The wife of Jitendra Tekale had lodged the complaint against the deceased and others on 12th February, 2017 under Sections 354, 324, 323, 143, 146, 147, 148, 149 of Indian penal Code was registered vide C.R. No.58 of 2017 alleging that deceased had outraged her modesty which was disclosed by her to husband and there was altercation between the parties. It is submitted that assuming the allegations to be true the intention was not to cause murder but to teach lesson to the deceased. It is submitted that there is no corresponding injury caused by alleged assault by beer bottle. Applicants are in custody for one and half year.

5. Learned APP submitted that there are eye witnesses to the incident. Deceased had sustained several injuries. Injury certificate shows that he had sustained injury by sharp object. There were abrasions, contusions and grievous injuries. It is submitted that there was clear intention to commit murder. Deceased had taken names of the accused as assailants. Deceased had sustained serious injuries and the cause of death is shock and

hemorrhage due to blunt impact. It is therefore submitted that applicants are not entitled for bail on merits as well as on the ground of parity. The deceased had also sustained injuries by sharp object. The applicant in B.A. No. 1239 of 2018 had assaulted by beer bottle.

6. The incident is allegedly out come of earlier FIR lodged by wife of accused Jitendra Tekale against the deceased for an offence under Section 354 of Indian Penal Code and other penal provisions. According to the complainant, the police had visited her house and informed her that her husband is lying in an injured condition and thereafter she proceeded to the said place. While the injured being taken to hospital by her and the police he disclosed names of some of the accused. It is not clear as to why the police did not take injured immediately to hospital when he was found lying in an injured condition. Statement of police constable Dilip Patil indicate that injured was found in injured condition and when the enquiry was made with him at the spot by his family he disclosed names of several assailants. The complainant has referred to three names which were disclosed by injured while he was being taken to hospital. Smt. Rekha Choudhary had witnessed the incident in the midnight from a distance. Alpesh

Choudhary has not informed the police or to neighbours and he went to sleep. Applicant in 1237 of 2018 was not armed with weapon whereas applicant No.1239 of 2018 was holding wooden washing bat. If the statement of Rekha Choudhary who is alleged eye witness is perused it can be seen that she has stated that the applicant Jitendra Tekale was armed with wooden washing bat and all assailants were assaulting the injured. She has stated that the injured was dragged into darkness. She has not referred to Jitendra or any other person assaulting injured by beer bottle. The prosecution is relying on recovery of broken beer bottle to attribute assault by beer bottle to accused Jitendra Tekale as there were some injuries by sharp object. The said recovery is made on 21st April, 2017. The broken beer bottle is recovered from open place. No witness has referred to any accused having assaulted by beer bottle. The prosecution is relying on statement of accused leading to recovery. Statement of Alpesh Choudhary and Ramesh Yadav attributes role to all accused having assaulted the injured. According to Ramesh Yadav, accused Jitendra Tekale was assaulting by wooden washing bat, his wife Dakshata was instigating other accused by saying that the injured should be assaulted as he is troubling her. Jitendra Tekale told him that the

injured has touched his wife and he should not intervene. The statement was recorded on 20th April, 2017 and till then he did not take any action. The statement also reflects the cause of alleged incident. Alpesh Choudhary has stated that he had seen the incident partly and thereafter injured was dragged in the darkness. Thus, role of assault is attributed to several accused who are granted bail.

7. Co-accused were granted bail by this Court. While granting bail to Smt. Dakshata Tekale vide Bail Application No. 2833 of 2017 order dated 10th January, 2018 it was observed that husband of Smt. Dakshata Tekale (Jitendra Tekale) got enraged and assaulted the deceased alongwith other accused. Balkrishna Sonne had outraged modesty of Smt. Dakshata Tekale and crime was registered vide C.R. No. 58 of 2017. The court also considered role of the said accused. While granting bail to accused Praveen Bansode vide Bail Application No. 172 of 2018 vide order dated 2nd February, 2018 it was observed that FIR was lodged by Smt. Dakshata Tekale against the deceased on 12th February, 2017 and despite registration of offence, deceased used to harass Smt. Dakshata Tekale and defame her in the vicinity and due to the said reasons accused No.1 Jitendra Tekale and others had assaulted

Balkrishna (deceased) with a wooden log, fist and kick blows. The role played by said accused was also considered. While granting bail to Rohit Pawar and Nitin Gaikwad vide bail application No. 2895 of 2017 by order dated 12th March, 2018 it was observed that by this Court that it appears that the incident of 17th April, 2017 is an outcome of an earlier incident dated 11th February, 2017. It appears that wife of Jitendra had lodged complaint against Balkrishna and others alleging offences punishable under Sections 354, 324, 323, 143, 146, 147, 148, 149 of Indian Penal Code vide C.R. No. I-58 of 2017. The said incident was disclosed by Dakshata to her husband and in pursuant to which there was altercation between parties. Prima facie it appears that the incident of 17th April, 2017 is an outcome of earlier incident. Similarly, bail was granted to Abhijeet Tekale vide Bail Application No. 417 of 2018 by order dated 20th March, 2018. Applicant in B.A. No. 1239 of 2018 has allegedly used wooden washing bat but considering the factual aspects as stated above and the fact that he is in detention from the date of arrest, bail has to be granted. There are no criminal antecedents against the applicants.

8. Taking into consideration totality of the aforesaid circumstances and considering the fact that the applicants are in

custody since one and half year, investigation is completed and chargesheet has been filed, case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Bail Applications are allowed;
- ii. The applicants are directed to be released on bail in C.R. No. 176 of 2017 registered with Narpoli Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii. The applicants shall attend Narpoli Police Station once in a month on first Monday between 10 a.m to 12 noon till conclusion of trial;
- iv. The applicants shall attend the trial Court on every date of hearing, unless exempted by the Court;
- v. The applicants shall not tamper with the evidence and/or influence the prosecution witnesses;
- vi. Both Bail Applications stand disposed off.

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.10.25
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(PRAKASH D. NAIK, J.)