

Sarnobat

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

BAIL APPLICATION NO.2965 OF 2017

Akshay Bhagwan Shedge	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent.

ALONGWITH

BAIL APPLICATION NO.2493 OF 2017

Mayur @ Papu J. Kakade	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent.

Mr.Aniket U.Nikam i/by Mr.Aashish Satpute for the Applicant.
Ms. Veera Shinde, APP for the Respondent.
Mr.Nanware, PSI, Lonikalbhor Police Station, Pune (Gramin).

CORAM : P. N. DESHMUKH, J.

DATE : 22nd MARCH, 2018.

P. C. :

1. As both these applications are arising out of Crime No. 490/2016, registered with Loni Kalbhor Police Station, Pune , they are heard together and decided by this common order.
2. Heard learned counsel for applicants and learned Additional Public Prosecutor who has also placed on record CA report, copy of which is supplied to the learned counsel for applicants.
3. It is submitted on behalf of applicant that, so far as

applicant Akshay Shedge in BA No. 2965 of 2017 is concerned, his involvement is not established in any manner except for he is being present at the time of incident. So far as applicant Mayur Kakade in application No. 2493 of 2017 is concerned, it is submitted that though according to report said applicant is alleged to have committed assault on the head of deceased Rohan by stone, in the statement of complainant recorded under section 164 of Cr. P.C., after ten days of his lodging report, he has not alleged to have committed any act of assault by Mayur Kakade.

4. Learned counsel for applicant has therefore, submitted that though name of Mayur is mentioned in the report, in view of contents of statement of complainant recorded under Section 164 Cr. P.C. as he has not attributed any role, there is possibility of complainant who is the only eye witness of the incident to have mistakenly identified some other person as Mayur Kakade to have committed assault by stone on head of the deceased which fact is clarified in his statement recorded ten days thereafter. To substantiate this submission, learned counsel for applicant has gone through the contents of spot panchanama and submitted that as per this document, there is no source of light available at the spot and therefore, there is every possibility of complainant's not identifying Mayur Kakade and/or mistakenly identifying the accused and naming in the report. It is therefore, prayed

that in the background of facts as aforesaid and as there is no other evidence, both the applications be allowed.

5. Learned APP submitted that as names of both the applicants are in report they are not entitled for bail as there is direct evidence against them. By referring to further contents of statement of complainant recorded under Section 164 Cr. P.C., learned APP had contended that as the deceased was found having injuries on his face which part of statement since is also corroborated with the P.M. notes, statement of complainant of applicant Mayur Kakade assaulting deceased by stone is said to be established and has thus contended that even if no name of Mayur is mentioned in said statement, that cannot be construed that he was not the assailant. It is therefore, submitted that applications be rejected.

6. Though admittedly on the earlier date time was sought by prosecution to place on record CA report, which documents are placed on record today, the tests carried out are inconclusive.

7. In the background of submissions advanced as aforesaid and facts, perusal of report reveals that incident took place on 12th June, 2016 at around 7.40 pm. Before that it is alleged that at 7.30 pm deceased Rohan while proceeding on his motorcycle had given cut by his vehicle to the motorcycle driven by Dada @ Akash Kamble, the co-accused. This act therefore, appears to be the reason of assault on

deceased Rohan.

8. From the report it is further noted that while deceased along with his friend including complainant Sujit Sawant were thereafter, sitting near the Bazar area, Akash Kamble, applicant Mayur Kakade came on one motorcycle while applicant Akshay Shedge and co-accused Gopal came by another motorcycle. Co-accused Dada Kamble was provided with one sickle like weapon by co-accused Gopal Ingole by which Dada Kamble committed assault on the head of deceased Rohan which he evaded, however, was injured by this blow on his hand. He further stated that during the course of said transaction, Rohan fell down upon which co-accused Dada Kamble, assaulted him on his face and other part of his body due to which, he sustained bleeding injuries. With reference to involvement of applicant Mayur Kakade in this incident, except for stating of his assaulting deceased, by stone on his head, nothing is attributed to him while applicant Akshay Shedge is concerned, except for his presence on spot, no overt act is attributed to him. In the background of contents of report as aforesaid and particularly considering the fact that applicant's name and of his committing assault on head of deceased is not mentioned in the complainant's statement, which came to be recorded on 23rd June, 2016, in any manner, as according to his statement co-accused Dada Kamble alone is attributed to have committed assault on

deceased on his head and after he fell down on his face, other parts of his body as above, there appears much substance in the case of applicant of his false identification or mistaken identification which is further found substantiated from spot panchanama since is drawn in the flash light of Mobile and in the light of head lights of police vehicle. This fact clearly established that there was no source of light on the spot. The incident has occurred on 12th June, 2016 at about 7.40 pm. In that view of the matter, case as set out on behalf of applicant, Mayur Kakade appears to be convincing, whose role even otherwise is not established as one of the assailants of Rohan, while no case is made out against the applicant Akshay Shedge.

9. In the background of facts and circumstances, both applications are liable to be allowed, as the investigation is complete as per order below;

ORDER

- (i) Applicants in Crime No. 490/2016 registered with Loni Kalbhor Police Station, Pune, shall be released on bail on their executing P.R. Bond of Rs.50,000/- each with one surety each in the like amount.
- (ii) While on bail applicants shall mark their presence in Police Station on the first day of each month, initially for the period of Six months and thereafter,

quarterly on the first day of such month, pending trial.

- (iii) Applicants shall not tamper with the witnesses
- (iv) Both the applications stand disposed of.

[P. N. DESHMUKH , J.]