

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

BAIL APPLICATION NO.1482 OF 2019

Roshan Sunil Pawar	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

**WITH
BAIL APPLICATION NO.1483 OF 2019**

Ajinkya @ Avinash Anant Shinde	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Silvin Y. Kale, Advocate for the Applicant.
Mrs.A.A. Takalkar, APP APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 20, 2019.

P.C. :

The applicants in both the applications were arrested in connection with C.R.No.I-291 of 2018, registered with Panvel City Police Station, Navi Mumbai, for the offence punishable under Section 302j read with 34 of Indian Penal Code.

2 The case of the prosecution is that on 30th June, 2018, the victim/complainant was waiting at rickshaw stand. Accused

Avi alias Ajinkya Shinde spoke to the victim and told him that he want to travel at Karanjade and the fare was fixed at Rs.60/-. He boarded rickshaw. The victim dropped him at Karanjade. He paid Rs.50/- towards the fare although it was fixed to be Rs.60/-. The victim demanded the balance amount. Accused Avi alias Ajinkya told him that he is associate of Rajesh Kaikadia and slapped him. The victim also slapped him. Thereafter, the victim went towards Panvel railway station and was waiting at rickshaw stand. At about 22:30 hrs., he went for smoking cigarette. Avi alias Ajinkya Shinde came and questioned him as to why he charges heavy fare and left the place. After some time, Ajinkya Shinde, Babu Kaikadia and two other persons approached the victim. Ajinkya Shinde assaulted him with iron rod in his head. As a result the victim fell down. Babu Kaikadia assaulted by knife and two other persons assaulted the victim by fist blows. Babu Kaikadia then assaulted him on head. The mother and wife of the victim reached the spot. Babu Kaikadia also assaulted his mother and all of them fled away from the place of incident. The victim was taken to the hospital. His statement was recorded, which was treated as First Information Report. Subsequently, victim succumbed to the injuries and charge under Section 302 of IPC was invoked.

3 Learned counsel for the applicant appearing for both the applicants submitted that there are major discrepancies in the evidence of witnesses. There are contradictions in the statements of eye witnesses. Applicants are falsely implicated,. There is no evidence against the applicant Roshan Pawar, the eye witnesses have given contradictory versions about the role played by him. Although, the applicant was identified, subsequent to identification, different role is attributed to the said applicant. The version of both the eye witnesses were contradictory to each other. The applicants are in custody from the date of arrest and further detention is not necessary. Co-accused Iqbal Abdul Kadir Shaha has been granted bail by this Court.

4 Learned APP submitted that the role has been assigned to both the applicants. Applicant Avinash had picked up quarrel with the deceased. Thereafter, he came along with other accused and the victim was assaulted by weapons. The applicants are identified by the eye witnesses. Thus, there is sufficient evidence against the applicant and bail may not be granted.

5 Having heard both the sides. I have perused the charge-sheet. The first informant is the victim of the crime. He

has stated that accused Avi alias Ajinkya had quarreled with him. Subsequently, he came along with the other accused. In the first information report, it is stated that Avi alias Ajinkya Shinde had assaulted the victim on his head by iron rod and Babu Kaikadia had assaulted by knife. Two unknown persons had allegedly caught hold of the victim. Thus, the role of assault is attributed to Avi alias Ajinkya Shinde and Babu Kaikadia. During the course of investigation, statement of Naziya and Sherbano were recorded. Naziya had stated in a statement under Section 164 that the victim was assaulted by Avi alias Ajinkya and others. Avi alias Ajinkya was holding iron rod and the other short person was holding knife. The victim was assaulted by iron rod on his head and the other person had assaulted by knife. Her statement was also recorded under Section 164 of Cr.P.C., which is in consonance with her earlier statement. Thus, the said witness categorically stated that Avi alias Ajinkya Shinde had assaulted the victim by iron rod on his head and other persons assaulted by knife. Statement of Sherbano was recorded under Section 164 of Cr.P.C. She has stated that accused Avi alias Ajinkya and others had assaulted the victim. The identification parade was conducted. In the parade Naziya has identified accused Roshan Pawar and stated that Roshan Pawar had assaulted victim by

knife. The other witness Ayesha has also identified Roshan Pawar and during the identification stated that he had assaulted the victim by fist blows. Thus, apparently, there are discrepancies in the evidence with regards to the role played by Roshan Pawar in the FIR, statement of eye witnesses and the identification parade. However, as far as Ajinkya @ Avinash Anant Shinde, is concerned, specific overtact has been attributed to him. There is consistency in the evidence of witnesses. He was the cause of quarrel and incident of murder. The victim as well as other witnesses have attributed him role of assault. In this circumstances, applicant Roshan Pawar can be granted bail, however, applicant Ajinkya @ Avinash Shinde is not entitled for bail.

7 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1482 of 2019, is allowed and disposed of;
- (ii) Applicant Roshan Sunil Pawar, is directed to be released on bail in connection with C.R.No.I-291 of 2018, registered with Panvel City Police

Station, Navi Mumbai, on his executing P.R.
Bond in the sum of Rs.25,000/-, with one or
more sureties in the like amount;

- (iii) Applicant Roshan Sunil Pawar, shall attend the
concerned police station once in a month on
first Saturday of the month between 10:00 a.m.
to 12:00 noon, till the conclusion of the trial;
- (iv) Bail Application No.1483 of 2019, is rejected.

(PRAKASH D. NAIK, J.)