

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1279 OF 2019
IN
CRIMINAL APPEAL NO. 1041 OF 2019

Atul @ Pintu Nandkumar Mohite	...Applicant
V/s.	
The State of Maharashtra	Respondent

Mr. Manoj Mohite a/w. Mr. Abhay A. Jadhavar,
Advocate for the applicant.

Mrs. M.H. Mhatre, APP for State.

**CORAM : B.P. DHARMADHIKARI, &
SANDEEP K. SHINDE, JJ.**

Tuesday, 1st October, 2019.

P.C. :

1. Heard respective Counsel.
2. Conviction of present applicant is based upon testimony of P.W.6-Vikram.
3. Case of prosecution is, on 17th September,

2015 P.W.6-Vikram and deceased Ranjit were sitting at a tea stall when accused persons arrived there on two motorcycles. Present applicant was occupying second motorcycle on which there were four persons. He had covered his face. He and others attacked deceased with sword and sickle.

4. Counsel for applicant submits that, Vikram has lodged FIR on 17th September, 2015 itself and he has not disclosed identity of person who allegedly was covering his face with handkerchief. He has not even given his description. Our attention is also invited to his deposition to show that, it is the police who has added his name in supplementary statement of Vikram on 28th September, 2015.

5. It is pointed out that, present applicant was arrested on 25th October, 2015 and prosecution claims that under Section 27 of the Indian Evidence Act, blood-stained clothes were recovered at his instance. Panch witness has not connected those clothes and there is no Chemical Analyser report

about the same.

6. Learned APP is relying upon report and deposition of P.W.6, Vikram.

7. Report lodged by Vikram at Exhibit-180 shows arrival of total seven accused persons on two motorcycles. Three persons were on first motorcycle and they were armed with sickles. Four persons were occupying other motorcycles. He has given names of three persons on second motorcycle and disclosed that fourth person was covering his face with handkerchief.

8. In Court, when his evidence was being recorded, he has stated that his supplementary statement was recorded by police on 28th September, 2015 and in it also, he did not name present applicant as accused. He accepted that, he mentioned present applicant as accused for the first time in Court when examination-in-chief was recorded.

9. Reason given by this witness is past criminal antecedents of present applicant and threat given by him to P.W.6. P.W.6 has deposed that because of built of person with covered face and by his curly hair, he could identify him as present applicant.

10. This narration about identification or reasons therefor, has appeared for the first time in Court. In Court, he has stated that on second motorcycle, four persons were sitting and only two out of them were known to him. He has stated that, their names were, Nitin Jagdale and Pintu Mohite i.e. present applicant.

11. His FIR shows that, on second motorcycle, Bhaiyya Ingale, Shravan Bhorkade, Nitin Jagdale and a person who had tied handkerchief on his face were sitting. Thus, he has disclosed identity of three persons and has not taken name of the present applicant. This, therefore shows that,

if he was knowing the present applicant on 17th September, 2015 as participant, he has on that day added two names unnecessarily.

12. The arrest of applicant is on 25th October, 2018 and recovery of blood-stained clothes from him is on 28th October, 2018. Panch witness to this disclosure and seizure could not identify the present applicant. In any case, there is no report of Chemical Analyser connecting those clothes with the crime.

13. In this situation, we find applicant entitled to be released on bail.

14. Accordingly, we order his release on following terms and conditions :

(a) The applicant shall execute personal bond in the sum of Rs.20,000/- before the trial court for proper behaviour and for remaining present on due dates before the

Court in the present matter with two independent sureties in the like amount.

(b) He shall give address at which he shall always be available during the pendency of this appeal along with his contact numbers.

(c) Similar details in relation to his sureties shall also be furnished.

(d) He shall not in any way directly or indirectly attempt to contact or pressurize either complainant or any of the witnesses in the matter.

(e) He shall keep vakalatnama of his advocate alive and valid till the appeal is finally decided by this Court and shall not be entitled to any fresh notice at the stage of final hearing.

(f) He shall report to the Superintendent/Registrar of Sessions Court, Malshiras, Solapur on first working Monday in every two months as a condition of his release.

(g) His failure to observe any of the terms and conditions shall entitle the respondent-State to take him in custody forthwith.

(h) Bail Application is accordingly allowed and disposed of.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)