

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

BAIL APPLICATION NO. 2047 OF 2018

Ajay Kaluram Jadhav

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. A.P.Mundergi, Sr. Advocate I/by Satyam Nimbalkar for the Applicant.

Mr. S.R. Agarkar, APP. for State.

Mr. Bhagwan Palve, PSI from Shirur Police Station, Dist. Pune (Rural)
present in court.

CORAM : P.N. DESHMUKH, J.

DATE : 12th March, 2019

PC :

1. Accused involved in CR No.514/2016 registered by Shirur Police Station for the offence punishable under Section 302, 120(B), 109, 143, 147, 148, 149 of the Indian Penal Code filed this application for bail. Admittedly the investigation is over and charge sheet is filed before the competent court.

2. Learned Senior counsel appearing for applicant before proceeding with his submissions has referred order dated 22.1.2019 with reference to CCTV footage which is seized in this crime of which

reference is already made as afore stated.

3. In the background of above order and admitted fact of prosecution seizing CCTV footage capturing the incident in question dated 22.8.2018 by not less than three cameras which were installed in a shop styled as Sai Mens Ware, it is submitted that, when this seizure panchanama is considered, there is involvement of only two assailants, in the present crime and there is nothing to establish involvement of any other accused persons in the present crime. It is further submitted that, in total contrast of CCTV footage panchanama dated 6.9.2016 when the statement of complainant Ganesh as well as all the eye witnesses to the incident namely Sanjay Lokhande, and other witnesses namely Hemraj Choudhary and Suryakant and Prashant Choudhary are considered, those statements raises reasonable doubt of involvement of present applicant, as according to the CCTV footage there are only two persons assailants involved in the present crime. According to the complainant and from all statements of above witnesses thus, there are more than five persons. It is also pointed out that, the statements of above named witnesses even

otherwise are contradictory to each other on material facts and has therefore prayed that, in view of the above evidence available against the applicant, there is no purpose in keeping applicant behind the bar pending trial, which is likely to take sufficient time for its completion. It is also contended that co-accused Ganesh and others are already released on bail by this Court who according to the prosecution are the conspirators. Learned counsel for applicant submitted that, the applicant is however not claiming for his release on bail on the ground of parity with them as their involvement in the crime is only as conspirators submits that even on considering the case of applicant on merits independently, no case is made out against him.

4. The learned APP. while opposing the application relied upon same statements, referred afore-stated and contended that from these statements the applicant's involvement is clearly established. It is thus, proved that application be rejected.

Learned APP. on instructions submits that apart from CCTV footage which is seized according to panchanama is dated 6.9.2016. There are no other camera installed nearby spot of incident .

In view of the statements made as aforesaid, case of prosecution is that, whatever CCTV footage has been captured and is seized in the present crime is to be relied upon and for that reason prosecution has relied upon the said panchanama. In fact, this document is also heavily relied by applicant to establish his innocence.

5. Perusal of the seizure panchanama of hard disc containing CCTV footage in respect of the seizure of hard disc containing CCTV footage would reveal that, said footage is recording of all three cameras which at the time of incident were installed in shop styled as Sai Mens Ware. The panchanama specifically states that three cameras were installed at the shop and on 23.8.2016 at round 2.14 hours 36 seconds, one person is seen to have come in front of the said shop and suddenly stopped in front of the shop, then another person came from opposite side and assaulted him by sharp weapons. The panchanama indicates that one more assailant came from behind, victim who was still sitting on his two wheeler and assaulted him. The person who was assaulted while he was sitting on his two wheeler is identified as accused Mahendra. Relying upon the contents of this

panchanama, it is clearly established that, above named deceased is assaulted only by two persons as aforesaid. There is nothing to disbelieve the contents of this document, more particularly, in view of the statement made by the Investigating Officer that except for these cameras which were installed in the shop though investigated, no other cameras are found installed, at the scene of offence. In that view of the matter, relying on said case of prosecution involvement of two persons is only established in the present crime.

6. Perusal of report by Ganesh, the complainant would reveal that at the time of incident on 28.8.2016 when he was shown present in the said shop, on hearing some shouts saw deceased Mahendra who is his uncle present outside the shop on his two wheeler who was stated to be assaulted on his head by Koyata by Pravin Kale and Vishal Kale and at the said time further involves one boy by name Jadhav to be present at the spot having armed with sattur who assaulted the deceased. No full name of Jadhav is mentioned in the report. It is material to note that, as against the contents of CCTV footage panchanama, the complainant has come out with the different story

involving Pravin Kale and Vishal Kale to be the assailants of deceased Mahendra had attributed assault by sattur by one boy namely Jadhav. Though name of applicant is Ajay Jadhav, he cannot be linked with boy namely Jadhav as referred in report more particularly, in the absence of identification parade since not held during the course of investigation.

7. Perusal of documents filed in support of the application in fact reveals that, in fact, one Sanjay Popat Lokhande is an eye witness to the incident as according to his statement at the time of incident he was travelling as pillion rider of deceased Mahendra and has stated that when they reached Sai Mens Ware shop co accused Rupesh Nihal came on his two wheeler and after overtaking deceased intercepted him. At that time co-accused Shadi Yadav came on his motor cycle with Rupesh Luniya who alighted from motor cycle and committed assault on Mahendra by Koyata. According to this eye witness, due to such assault, he along with deceased fell down and in the mean time co accused Pravin Kale and Vishal Kale came from behind and assaulted the deceased. Due to which he got afraid. In the fag end he states that, he saw the applicant present on the spot armed with sattur.

Considering said statement of eye witness, prima facie, it is found that, he has exaggerated his case on the point of the assault against the contents of CCTV footage panchanama, wherein only two assailants are seen to have assaulted the deceased. According to the eye witnesses statement of Rupesh and Sunny are the persons who had opened assault on deceased however, in the CCTV footage panchanama, reference is of two assailants only. Rest of the contents of statement of Sanjay creates doubt to establish the involvement of co-accused Pravin Kale. Vishal Kale and applicant. In fact the statement of eye witness Sanjay also appears contradictory on the material part from statement of eye witness Ganesh, as according to him, at the time of incident on 20.8.2016 when deceased came in front of Sai Mens Ware assault was opened upon him by Pravin Kale and Vishal Kale which is contrary to the statement of the eye witness who was pillion rider of deceased.

8. Moreover, perusal of statements of other witnesses relied upon by the prosecution namely Hemraj Choudhary, Suryakant Choudhary and Prashant Choudhary when considered, they are not

found to be convincing being contrary to the contents of CCTV footage panchanama, having involving more than five persons as assailants when these statements are considered with reference to role of applicant. Though, according to eye witness he was only found present having armed with sattur and according to complainant one boy by name Jadhav was present. Witnesses Suryakant and Prashant state that having armed with sattur, the applicant was giving threats to passers by and was raising shouts which is nowhere stated by complainant nor by eye witness nor seen in the CCTV footage.

9. For the reasons stated aforesaid, as applicant's involvement in the present crime is found to be doubtful and since the investigation is completed and charge sheet is filed application is liable to be allowed by imposing suitable condition as per the following order.

a) Applicant Shri. Ajay Kaluram Jadhav shall be released on bail in CR No.514/2016 registered by Shirur Police Station for the offence punishable under Section 302, 120(B), 109, 143, 147, 148, 149 of the Indian Penal Code on his executing PR bond in the sum of Rs.50,000/- with one surety in the like amount.

b) While on bail applicant shall mark his presence with Shirur Police Station, Pune (Rural) on first day of each month initially for a period of six months and thereafter quarterly on every first day of each such month pending trial.

c) Applicant shall not tamper with the witnesses.

d) The learned trial court shall not get influenced with any of the observations made above and shall independently consider the case on evaluating the evidence.

(P.N. DESHMUKH, J.)