

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.89 OF 2020**

Vishal Sanjay Ahire .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Sachin H. Deokar for the Applicant.

Ms. M.M. Deshmukh, A.P.P. for the State.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 02ND DECEMBER, 2020.

P.C:-

1. C.R. No.716 of 2016 registered with Pimpri Police Station was investigated and has resulted into charge-sheet being filed for the offences punishable under Sections 302, 307, 326, 324, 323, 504, 506, 143, 144, 146, 147, 148 and 149 of the IPC and under Section 4(25) of the Arms Act and under Section 37(1) read with Section 135 of the Maharashtra Police Act and under Section 3 and 7 of the Criminal Law Amendment Act. The Applicant is arraigned as Accused No.4 and he seeks his release on bail.

2. The submission of Mr. Sachin Deokar, learned counsel for the Applicant is to the effect that the Applicant is a young boy aged 19 years, and he has no criminal antecedents. The Applicant is arrested in relation to the said crime on 17/12/2016 and his Bail Application filed before the Sessions Judge, Pune, is rejected. Learned counsel submits that on a plain reading of the FIR and the material filed in the charge-sheet, which include the statements of the injured persons, at the most, the Applicant could be attributed to an offence for attempt to commit murder and even the injured witnesses have ascribed him the role of assaulting the Complainant. According to the witnesses, he did not give any blow to the deceased and, therefore, there is no possibility of his conviction under Section 302 of the IPC.

3. Learned A.P.P., on the other hand, vehemently submits that the invocation of offence of murder is coupled with Section 149 of the IPC and, therefore, his presence at the spot when the incident took place would be sufficient to rope him in the offence of murder along with the other accused persons who caused the death of Ashpak Shaikh, who succumbed to the assault on 15/12/2016.

4. With the assistance of learned counsel for the respective parties, perused the charge-sheet and the material compiled therein indicting the Applicant in the said crime. The Complainant is one Ravindra Gadhire, who is also an injured.

He has narrated the incident which took place on 13/12/2016 when he along with deceased Ashpak Shaikh were chitchatting in one lane in their locality at Pimpri, Pune. He has alleged that at around 9.30 p.m, a person acquainted to him by name Sandesh Kamble accompanied by Akash, Chota Ravan, Vishal Ahire (Applicant), Anil and 4 to 5 other persons approached them. Sandesh Kamble is said to have entered into a brawl and, a verbal altercation took place. At that time, the Complainant allege that, Sandesh Kamble assaulted Ashpak on his head by means of sickle with an intention to kill him and Akash fell him on the ground and assaulted him by fist blows. The Complainant further narrates that at that time, Chota Ravan assaulted him by sickle on his back. At the same time, when the deceased was assaulted by the other accused, the present Applicant Vishal Ahire attacked him by means of iron rod and he gave a blow on his back and accused Anil assaulted him by means of wooden log. The Complainant thus alleges that all the accused persons assaulted Ashpak and him by means of weapons in their hands. It is also alleged that all the accused persons were clamoring, resulting into an atmosphere of terror in the locality and the persons residing nearby moved inside and shop keepers pulled shutters down. The injured were taken to the hospital and Ashpak succumbed to the injuries.

5. It is this version of the Complainant which is corroborated by the statements of witnesses like Sangita Waghmare, Ashwini

Gadhire, Hayat Mehtab Shaikh and Yasmin Ayub Shaikh, who gathered the names of the assailants from Ashpak. In her statement, Ashwini Gadhire states that she reached the spot on being informed that her husband Ravindra Gadhire (Complainant) was being assaulted. She state that Sandesh Kamble, Akash Karale and 7 to 8 persons accompanying him were armed with sword, sickle and rods and they were assaulting her husband and Ashpak. She state that Sandesh Kamble had assaulted Ashpak in his head along with Chota Ravan. Vishal Ahire assaulted the Complainant on his back by means of iron rod. She thus alleges that Sandesh Kamble and his accomplice assaulted her husband by means of the weapons they were carrying and they created a reign of terror in the locality. The injured were referred to the hospital and Ashpak succumbed to the injuries. On postmortem of the dead body of Ashpak, the cause of death is opine as “due to head injury”.

6. The supplementary statements have also been recorded of the residents of the locality since it is alleged that they did not give the true depiction of the incident on account of the atmosphere of terror created by the accused persons. The said statements attribute the Applicant the role of assaulting Ravindra by means of iron rod in his back and it is not the case of the prosecution that the Applicant assaulted Ashpak Shaikh resulting into the invocation of Section 302 of the IPC against him.

7. The four unknown persons named in the FIR have been released on bail by the Sessions Court. The Additional Sessions Judge has merely rejected the Application of the Applicant on the ground that he would tamper the prosecution evidence.

8. The Applicant was arrested on 17/12/2016 and since then, he is incarcerated. It is informed that the charges are yet not been framed and it is uncertain when the trial will commence and conclude. By ensuring that the Applicant is available for trial and he does not create any pressure on the witnesses, who are residents of Pimpri, Pune but, at the same time on ascertaining the role assigned to the Applicant in the charge-sheet and also accepting the fact that at the end of the trial, with the aid of Section 149 of the IPC, where every member of an unlawful assembly can be held guilty of an offence committed in prosecution of common object, the Applicant, in my considered opinion, cannot be kept behind bar indefinitely and the following order would suffice the ends of justice.

ORDER

- (a) The Applicant – Vishal Sanjay Ahire, shall be released on bail in C.R. No.716 of 2016 registered with Pimpri Police Station, District Pune on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.

- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall report to the Pimpri Police Station twice in every month between 11.00 a.m. and 2.00 p.m.
- (d) The Applicant shall provide his residential address and telephone number to the Investigating Officer.
- (e) The Applicant shall cooperate with the trial and attend the trial Court on every dates unless exempted by the Court.

9. The Application is allowed in the aforestated terms.

10. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J.