

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2548 OF 2019

Pritam @ Bikshu Nandu Avatare .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Satyavrat Joshi i/b Mr. Nitesh J. Mohite for the Applicant.

Mr. S.V. Gavand, A.P.P. for the State.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 09TH DECEMBER, 2020.

P.C:-

1. The Applicant is charge-sheeted in C.R. No.259 of 2018 registered with Chinchwad Police Station, Pune for offences punishable under Sections 307, 325, 323, 143, 144, 147, 148, 149, 504, 120(B) of the IPC and Sections 37(1) read with Section 135 of the Maharashtra Police Act and Sections 4 (25), (27) of the Arms Act.

2. The said CR was registered on 31/07/2018 at the instance of one Aakash Navnath Kasab. He has stated that the accused Vikas Bhise, Akshay Kamble, Raju Hirve, Dadha Bhise,

Shubham Avatare, Pritam Avatare (Applicant) and one Totya Pandalkar were his friends, but some months back, a quibble had ensued between them. However, no complaint was officially lodged. In the month of April, 2018, an offence was registered against him by Akshay and he came to be arrested. When he was released, he did not keep any contact with his friends. He then referred to an incident dated 30/07/2018 when he was enroute his house, Vikas armed with sickle assaulted him and the blow landed on his elbow and Accused Raju kicked him on his back resulting into his fall. At that time, Dadha hit him in his hand by sickle and when he was in supine condition, Shubham, Tatya, Akshay and Pritam assaulted him by kicks and fists. This assault resulted into bleeding injuries and he came to the police station and reported the incident and admitted in Yashwantrao Chavan Memorial Hospital for treatment. His supplementary statement came to be recorded on 09/08/2018, which is at variance with his statement leading to filing of FIR. He states that he was attacked on 30/07/2018 but he was petrified by the said assault and, therefore, he had not narrated the incident properly but he gave a statement that Vikas and Pritam (Applicant) were armed with sickle and he has alleged that Vikas assaulted him on his left hand whereas the Applicant by means of a sickle, with an intent to kill him, gave a blow in his head and hand. Further, he alleged that Dadha also picked up the sickle from Pritam's hand and gave a blow on his chest.

3. The charge-sheet contains statements of eye-witnesses which corroborates the statement of the Complainant. The present Applicant is attributed a specific role of assaulting the Complainant in his head and hands by means of sickle. The injury certificate is also compiled in the charge-sheet and it referred to 10 incised wounds of which one incised wound over left high parietal region is of 3x0.2x0.1 cm. Injury No.4 is incised wound over left temporal region measuring 3x0.2x0.1 cm. Further, Injury No.1 and Injury No.2 are incised wounds over right forearm medial aspect and lateral aspect. Injury No.8 is an incised wound over left forearm measuring 0.5x0.2x0.2 cm. It is this material collected by the Investigating Agency which has resulted into charging the Applicant with Section 307 along with Sections 143, 144, 147, 148 and 149 of the IPC.

4. Mr. Joshi, learned counsel for the Applicant states that the discrepancy in the statement of the Complainant makes the prosecution case feeble. In the very first statement, the Complainant had ascribed the role of hitting him by kicks and fists whereas the statements of other witnesses and also the supplementary statement of the Complainant, attribute the role of the Applicant as hitting the Complainant on the head and hands by means of a sickle. The Complainant has given a reason in the supplementary statement for the variation and he states that since he was injured and frightened, he did not get his statement recorded properly. This is a possible explanation and the

subsequent version of the Complainant is corroborated by several eye-witnesses and forms part of the charge-sheet. There are corresponding injuries which are recorded on medico-legal examination of the Complainant. Mr. Joshi has placed reliance on the order passed by this court in the case of co-accused Shubham Avatare and also on the order passed by the Additional Sessions Judge in the case of another co-accused Raju Hirve, who have been released on bail. The role ascribed to the said co-accused is distinct from the one that is attributed to the present Applicant. He is the one who attacked the Complainant in his head by means of a weapon i.e. sickle. The injuries corresponding to the said assault are noted on the parietal region and temporal region and the specifications are mentioned above. For attracting offence under Section 307 of the IPC, it is not the nature of injury but the knowledge and intention which will have to be discerned. The Applicant has chosen the vital organ i.e. the head and, the intention is very apparent in the assault by means of deadly weapon. The discrepancy in the statement and its effect will have to be appreciated at the time of trial. *Prima facie*, the role attributed to the Applicant would fall within the purview of Section 307 of the IPC and he cannot claim parity with other co-accused, who have been released on bail and who have been attributed a minimal role by the Complainant and the other witnesses.

5. There is one another reason why I am not inclined to grant

the Application. Though Mr. Joshi has vehemently argued that the Applicant is aged about 24 years and is a young boy, learned A.P.P. has invited my attention to the antecedents of the Applicant. He is indicted in two other offences registered with Chinchwad Police Station in 2016 and 2018 under Section 376 of the IPC. Proceedings under Section 41(1)(d) of the Cr.P.C. is initiated against him. He is also inculpated in two offences punishable under Sections 379 and 380 read with Section 34 of the IPC respectively. The fact that the Applicant is a young boy will not be the only factor which would entitle him to set at liberty. Taking into account the criminal antecedents and the nature of allegations levelled against him in the light of the charge-sheet filed, the Application deserves to be rejected and is rejected.

SMT. BHARATI DANGRE, J.