

Urmila Ingale

Digitally
signed by
URMILA
PRAMOD
INGALE
Date:
2021.09.06
15:51:51
+0530

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

BAIL APPLICATION NO. 3 OF 2020

Sushant @ Babu Jalindar Pawar Applicant
Vs.
The State of Maharashtra Respondent

Mr.Manoj Mohite, Senior Advocate i/b Mr.Satyavrat Joshi,
Mr.Nitesh Mohite & Mr.Sunil Kamble, for the Applicant.
Smt. Veera Shinde, APP for the Respondent – State.

CORAM : M. S.KARNIK, J.

DATE : 06th SEPTEMBER, 2021

P.C. :

. I have heard learned Senior Advocate Shri Mohite for the applicant. The applicant is arrested on 15/07/2016 in connection with Crime No. 121 registered with Dighi Police Station on 15/07/2016. The investigation is completed. The charge-sheet is filed on 10/10/2016. The prosecution case is that on 15/07/2016 at about 3.30 a.m., Dighi police had taken down a report of one Shubham Fuge who is the son of the deceased. He disclosed to the police that on 14/07/2016, a phone call was received by him from Atul Mohite requesting him to bring his father for the birthday party of one of his friend at Dighi. At around 11.30 p.m., Shubham saw his father was being assaulted

in open space by Atul Mohite with a huge stone on the face of his father. According to him, he had also seen Babu Walke assaulting his father with a stone. It is alleged that Babu Walke was accompanied by his two nephews - one who was armed with sattur was assaulting Dattatray with sattur and the other person was armed with sword and he was assaulting his father with a sword. He has also stated that Shailesh was assaulting his father with fist and kick blows and Prem Dholpuria was assaulting his father with some deadly weapon. Similarly, Babu had assaulted with a chopper and all of them were accompanied by another two persons. All the assailants had fled from the spot.

2. My attention is invited to the statement of eyewitnesses Shubham Phuge and Rohan Panchal. Both the witnesses though say that Babu was one of the assailants, but did not name the applicant. The statements of Shubham and Rohan are recorded immediately after the incident. According to the statement of Shubham, there were 9 assailants. It is submitted by learned Senior Advocate that Mahesh Suryawanshi who claims to be an eyewitness, happens to be a chance witness and his statement is recorded on the next day. The applicant is named by Mahesh Suryawanshi. The applicant is said to have assaulted the deceased with a 'Koyta'. Mahesh Suryawanshi

states that he saw the assailants in the light of car. He submits that there are two sets of witnesses. Shubham Phuge and Rohan Panchal being one set of witnesses state that there are 9 assailants, whereas Mahesh Suryawanshi states that there are 4 assailants.

3. One of the assailants - Amol @ Balli Kailas Pathare who had a big iron sattur in his hand and who is alleged to have assaulted the deceased on his head has been granted bail by the Sessions Court vide order passed below Exhibit 31 in Sessions Case No. 817 of 2016. The reason why the Sessions Court granted bail to Balli is that the statement of Mahesh Suryawanshi did not disclose the presence of the applicant (Balli) at the spot. Further the Sessions Court observed that presence of complainant - Shubham Phuge and Rahul Panchal at the spot is suspicious. The Sessions Court observed that the role of Balli is similar to role of co-accused - Kakka alias Prem Dholpuriya and Shailesh Walake who are released on bail. It thus appears that there are two sets of eyewitnesses. The statements of two eye witnesses i.e. Shubham Phuge and Rahul Panchal are recorded immediately after the incident, whereas statement of Mahesh Suryawanshi is recorded on the next day. According to learned Senior Advocate, eyewitness Mahesh Suryawanshi is a chance

witness. It is on the basis that Mahesh Suryawanshi has named the applicant, the bail of the applicant is rejected.

4. As to which set of eyewitnesses is to be believed and what weightage to their evidence is to be given is for the trial Court to consider during trial. No doubt, Mahesh Suryawanshi has named the applicant. However, the other eyewitnesses - Shubham Phuge and Rahul Panchal do not name the applicant but only referred to one of the assailant as Babu. These two set of eyewitness name different assailants. The assailants Balli and Prem Dholpuriya named by Shubham and Rahul are assigned similar role as that of the applicant. They have been released on bail.

5. Learned Public Prosecutor opposed the application and contended that considering the serious nature of the offence and role assigned to the applicant, this is not a fit case to grant bail. She relied upon the statement of Mahesh Suryawanshi to contend that applicant has been named by eyewitnesses and role of assaulting the deceased with a chopper on his head has been attributed to him.

6. Considering that the charge-sheet has been filed and

the applicant is in custody since 15/07/2016 and further considering that the co-accused who have been attributed similar roles as the one assigned to the applicant by other set of witnesses, have been released on bail, in my opinion, the applicant also deserves to be released on bail subject however, to imposing of stringent conditions. I am informed that there are no antecedents against the applicant. Hence, the following order.

ORDER

(i) The applicant be released on bail on furnishing P.R.Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount in connection with the C.R.No. 121 of 2016 registered with Dighi Police Station, Pune.

(ii) The applicant shall not enter the jurisdiction of Pune District except with the previous permission of the trial Court or for attending the dates on which the trial is fixed.

(iii) The applicant shall not tamper with the evidence, influence or threaten the witnesses in any manner.

(iv) The applicant shall furnish the residential address to the trial Court during his residence outside the Pune district and shall report to the nearest police station twice a week, every Monday and Thursday between 11.00 a.m. and 12.00 noon.

(v) Any attempt on the applicant's part to enter the jurisdiction of the Pune district without permission of the trial Court or other than on the dates fixed for trial will be viewed seriously.

7. Bail Application is disposed of.

(M.S.KARNIK, J.)