

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

CRIMINAL BAIL APPLICATION NO. 162 OF 2020

Ketan Mahendrakumar Bhalekar and Ors. Applicants

Versus
The State of Maharashtra Respondent

Mr. A.P. Mundargi, Senior Advocate i/b Rohon Hogle for the applicants.

Mr. Ajay Patil, APP for the State/Respondent.

**CORAM: SARANG V. KOTWAL, J.
DATE : 23rd FEBRUARY 2021**

P.C. :

1. The applicants are seeking their release on bail in connection with C.R. No. 600/2019 registered at Talegaon Dabhade Police Station, Pune, under sections 302, 143, 147, 148, 149, 120B, 201, 392 of the Indian Penal Code. The applicants were arrested on 30/07/2019 and since then they are in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Mr. A.P. Mundrgi, Senior Counsel for the applicants and Mr. Ajay Patil, learned APP for the State.

3. The prosecution case is in respect of the murder of one Akshay Yadav. He was assaulted on 30/3/2019 at about 2.00 p.m. and he succumbed to the injuries on 5/4/2019 in the hospital. Initially an accidental death report was lodged and investigation was carried out in that direction. Subsequently the FIR was lodged by PSI attached to Talegaon Dabhade Police station Shri Vaibhav Soanvane on 30/6/2019. He has stated that earlier ADR No. 47 of 2019 was registered on 11/4/2019. At that time, the parents and in-laws of the deceased had not given correct information. But the police officers were suspicious and again called the in-laws of the deceased to the Police Station on 29/6/2019. At that time, they were told that Akshay's sister-in-law i.e. wife's sister Bharati had seen the incident wherein Akshay was assaulted by the main accused Kiran and his associates. The present applicants are associates of Kiran. On this basis the FIR

was lodged.

4. The FIR itself further mentions that Akshay's wife, Aarti was having illicit relations with the main accused Kiran. Akshay had gone to question Kiran about it and at that time he was assaulted.

5. Learned Senior Counsel for the applicants submitted that for about three months, the prosecution story was that, it was an accidental death. He invited my attention to the statements of various witnesses and in particular that of Bharati recorded on 16/4/2019. In that statement she had stated that on the day of incident, at that time, she had come out of her house and she saw that the deceased was already lying injured behind the house of Kiran. Akshay's motor cycle had fallen nearby. In that statement Bharati had not stated that she had witnessed actual assault. He further submitted that the statement of wife of the deceased and the Police Officer who had gone to the hospital, to make inquiries, also show that the deceased had named only Kiran Bodke as

his assailant. He further submitted that, for the first time, on 3/7/2019, the witnesses namely Bharati and Sheela, who were sister and mother of deceased's wife Aarti, have stated about having seen the incident and they have named the present applicants.

6. In their statements recorded on 7/7/2019, they have given specific roles to the present applicants. He, therefore, submitted that, it is a clear case of false implication of the applicants and it is an after thought on the part of the alleged eye witnesses to name the applicants.

7. Learned APP, on the other hand submitted that the delay in disclosure of the actual incident is explained by the witnesses themselves that they were scared of the main accused Kiran and they did not want to cause any further embarrassment to their family. He submitted that the statements of the witnesses are recorded under section 164 of Cr.PC. Wherein they have stuck to their

story about involvement of the present applicants. He therefore, opposed the application.

8. I have considered these submissions. Post mortem notes show that the deceased had suffered as many as 13 injuries , out of which one injection mark was attributable to the treatment. There were 12 other injuries caused during the assault. The cause of death was mentioned as “ death due to head injury”. The charge-sheet shows that there were eye witnesses to the incident namely Sheela and Bharati. Significantly, in their statements recorded in April 2019, they had mentioned that it was an accident and the deceased was already lying injured at the spot. It means that they had not seen the incident. However, they have changed their version and their statements recorded thereafter mention that they had seen the incident. Bharati as well as Sheela have stated that they saw that scuffle was going between Kiran and the deceased. Kiran was assaulting the deceased with stones and at that time four to five persons, including the present applicants, came there

and they had also assaulted the deceased with stones, kicks and fists blows. Thereafter, he was removed to the hospital. Their statements were again recorded on 7/7/2019 and this time they gave more details and specific roles to the present applicants. In those statements they have stated that when they saw Kiran and deceased scuffling with each other, Kiran picked up a stone and gave blows on the face of the deceased and back side of the head. He fell down. Thereafter, one Narendra Dhole came there and he also assaulted the deceased with stone. After that, applicants Ketan, Omkar and Nikhil came there, assaulted the deceased with bricks lying nearby and thereafter the deceased was taken to the hospital.

9. In their statements recorded under section 164 of Cr.P.C., on 25/7/2019, Sheela has specifically named Kiran and applicant Ketan. Others are described as their associates. Bharati has named Kiran, Ketan, Narnedra and others are described as their associates. Thus, at

every stage these important witnesses have improved on their version. At the very first instance, they had not named anybody. In fact, they have not stated that they have witnessed the incident. There is a clear attempt to improve their version to give specific roles to the different accused by naming them on different occasions.

10. There is another statement of one Dada Saheb Shelar. He was with the deceased and he had allegedly seen the entire incident. His statement was recorded on 9/7/2019. He has stated that he had seen the incident but he was not knowing the assailants. The investigating agency has not taken any care to conduct test identification parade to fix identity of the assailants. Therefore his statement does not help investigating agency. As discussed earlier, statements of two main witnesses i.e. Sheela and Bharati suffer from infirmities as they have gone on improving their version. At the very first instance, they had not even stated that they had seen the incident.

11. In this background, the alleged oral Dying Declaration of the deceased assumes importance. In that respect there is a statement of wife of the deceased. She has stated that after the deceased was admitted to the hospital, she went to meet him and at that time the deceased had told her that Kiran had assaulted him. This statement is supported by API Gawade who was present in the hospital when Akshay made that statement. She has also stated that Akshay had only given name of Kiran as his assailant.

12. In this view of the matter, sufficient doubt is created against the prosecution story as far as the present applicants are concerned. Therefore, I am inclined to grant bail to these applicants. The observations made in this application are restricted only to passing of this order, the trial court shall not be influenced by any of these observations.

13. Hence the following order.

ORDER

- (i) In connection with C.R. No.600 of 2019 registered with Talegaon Dabhade Police Station, the Applicants are directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)