

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.345 OF 2020
WITH
INTERIM APPLICATION NO.2307 OF 2021**

Ashish Amrut Sawane @

Ashish Amarappa Sawale .. Applicant

Versus

The State of Maharashtra .. Respondent

...

Mr.Raju D. Suryawanshi for the Applicant.

Mr.Sanjay Kulkarni for the Intervenor.

Ms.Aruna S. Pai, PP for the State/Respondent.

Mr.Kishor Mahashabde, PSI, Crime Branch, Ulhasnagar
present.

...

CORAM: BHARATI DANGRE, J.

DATED : 27th OCTOBER, 2021

P.C:-

1. By the present application, the applicant seeks his release on bail in C.R.No.I-337 of 2015 registered with Ambernath Police Station, District Thane, which invokes Sections 302, 307, 142, 143, 147, 148, 149, 341 of the Indian Penal Code, Sections 4 and 25 of the Arms Act and Section 37(1) of the Maharashtra Police Act.

2. Heard learned counsel for the Applicant, learned PP for the State and learned counsel for the First Informant.

3. The charge-sheet is filed against 19 accused persons and the present applicant is arraigned as Accused No.19.

The complainant is one Vinod Sudam Bhor, who had approached the police station in the backdrop of the incident, which he had witnessed on 25/12/2015 at 10.15 a.m.. He has narrated that when he was approaching to Morivali Naka, since it was informed to him that the deceased Pappu Gunjal has proceeded to Morivali Naka all alone on his motorcycle, in the midway he could see Pappu Gunjal approaching and he was encircled by 15 to 16 persons, who were armed with swords and chopper. He witnessed some persons assaulting Pappu and when he moved a little closer, he could identify the assailants, whom he named in the FIR, which include the name of the present applicant as well as one Jagdish Thete. While he was witnessing the said assault, another witness, Nitin Gunjal also arrived at the spot, who stood there with him and witnessed the incident. The informant specifically states that amongst those persons, Shankar Chalwadi was armed with chopper, Pintya was armed with sword and Ramdas and Onkar were armed with choppers. The informant also described that during the assault, the assailants were raising shouts and abuses. In the complaint, he referred to a previous enmity between the Manager of the deceased with Shankar Chalwadi and the present applicant and his statement is to the effect that four months before, on account of demand of salary, one Shankar Chalwadi and the present applicant had

assaulted the Manager of the deceased by name Ashwith Shetty. It is alleged that the deceased had intervened and the motive is attributed by the informant that since that time, the said persons wanted to revenge him.

4. During the course of investigation, statements of seven eye witnesses were recorded and included in the charge-sheet. My attention has been invited to the said statements by the learned counsel for the applicant and his submission is to the effect that none of the witness has spoken about the applicant or named him, as the one to be present when the incident took place nor any role is attributed to him by any of the witnesses in the alleged assault.

5. When confronted with the statements, learned PP has invited my attention to the supplementary statement of one Mangesh Basare recorded on 27/12/2015. However on perusal of the statement, it is revealed that he is speaking on the basis of the information received by him from the informant, Vinod Bhor. He cannot be described as an eye witness. Learned PP does not dispute the said statement, as recorded.

6. In the light of the aforesaid statements recorded and compiled in the charge-sheet, it can be said that, except the first informant, none of the witnesses who are the eye witnesses to the incident, name the applicant as the assailant or even do not talk of his presence when the deceased was

assaulted. The statement of Nitin Gunjal, who is also incidentally arrived on the spot alongwith the informant, also is conspicuously silent about the presence of the applicant on the spot. As far as recovery is concerned, there is recovery of one mobile from the present applicant, which by itself, cannot be considered as an incriminating material.

7. The offence undisputedly is serious one as the postmortem report reveals that there are 20 injuries sustained by the deceased and the cause of death is ascertained as 'hemorrhagic shock due to hard and cut throat injuries'. However, in absence of any incriminating material in the charge-sheet demonstrating that he is the assailant, barring the statement of the first informant, which is not corroborated by any of the witnesses whose statements are compiled in the charge-sheet and who have witnessed the entire incident and in absence of any recovery from the applicant, I deem it expedient to release the applicant on bail, albeit the objection of the learned PP to the effect that the applicant was absconding for 13 months and could be only arrested later. On the objection, being raised that the applicant is resident of State of Karnataka and there is every likelihood that he would abscond, learned counsel for the applicant has invited my attention towards the address of the applicant as mentioned in the title clause of the application; which is; Kanakappa Chawl, Chinchpada, Ambernath (W), District Thane. In the memorandum recorded under Section 27 of the Indian Evidence Act, though it is not considered as a substantive evidence, the address given of the applicant is the

same. The submission of the learned counsel for the applicant is to the effect that the applicant is born and brought up in Ambernath and though he is a native of Karnataka, it cannot be a ground for keeping him away from his liberty. He assures that the applicant will face the trial, since he is charge-sheeted.

An antecedent against him in the form of C.R.No.207 of 2015 under Sections 395 and 397 of the Indian Penal Code, would also not keep him away from his release on bail, taking into account the seriousness of the offence with which he has been accused of.

8. Learned PP has also opposed the application on the ground that the charge is framed and the trial is likely to commence on 16/11/2021. However, it is informed by learned counsel for the applicant that approximately 67 witnesses are likely to be examined, as per the list of witnesses, submitted by the prosecution and the trial would be long drawn process, considering the number of witnesses to be examined. I am not inclined to consider the request for fixing the schedule of trial, since it is for the learned Judge to proceed with the trial as per the schedule, which he fixes taking into account the pendency of other trials before him.

9. The applicant is incarcerated, since 25/1/2017. He cannot be incarcerated too long, in the wake of the material compiled against him in the charge-sheet and deserves his release on bail. The release of the applicant shall be, however, subject to the stipulation that he will not step in Ambernath Taluka till conclusion of the trial. Hence, the following order.

: ORDER :

- (a) Applicant - Ashish Amrut Sawane @ Ashish Amrappa Sawale shall be released on bail in C.R.No.I-337 of 2015 registered with Ambernath Police Station, District Thane on furnishing P.R. bond to the extent of Rs.25,000/- with one or more local 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 so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.
- (c) The applicant shall not step in Ambernath Taluka till conclusion of the trial.
- (d) The applicant shall mark his presence before the Crime Branch, Thane (Unit 1) on every Friday between 10.00 a.m. to 2.00 p.m.
- (e) Failure to report to the police station as directed, without prior permission of the officer to whom he is reporting on more than two occasions, will entitle the prosecution to move for cancellation of bail.

10. The application is allowed in the aforestated terms.

11. In view of the disposal of the Bail Application, Interim application No.2307 of 2021 also stands disposed of.

(SMT. BHARATI DANGRE, J.)