

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.795 OF 2021

Gaurav @ Gogya Govind Bhambare .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Piyush R. Toshnival for the Applicant.

Ms. A.A. Takalkar, A.P.P. for the State.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 05TH JULY, 2021.

P.C:-

1. The Applicant came to be arrested on 10/12/2018 being arraigned as an accused in C.R. No.657 of 2018 registered with Bharti Vidyapith Police Station. The said C.R. invokes Sections 302, 143, 147, 148, 149, 120-B of the Indian Penal Code and Section 4(25) of the Arms Act and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act.

2. Learned counsel Mr. Toshnival submits that it is too long since the Applicant is incarcerated and, the co-accused in the crime with a similar role, has been released on bail by this court

on 16/12/2019 in Bail Application No.2202 of 2019. Apart from this, co-accused Prakash Margale, Ganesh Maruti Pote and one Shubham Hangrage are also released on bail.

3. In order to ascertain whether the Applicant is entitled to claim parity, with the assistance of learned counsel for the Applicant and learned A.P.P., I have perused the FIR and the statements of the eye-witnesses. As far as the role attributed to the present Applicant is concerned, the Complainant, who is not an eye-witnesses, states that when he admitted his cousin, the deceased Vinayak, in the hospital at Katraj, he was informed about the incident by one Sandip Gejge and Vikas Dhumal and, on the basis of the information received, he had lodged the complaint. The role attributed to the Applicant as can be spelt out from the complaint is on account of previous enmity between the two groups; Vinayak, belonging to one group and another group being headed by Vishal and Prakash. On the date of the incident i.e. on 06/12/2018, the rival gang assaulted the deceased Vinayak and, as far as the Applicant and Ganesh Gaikwad are concerned, the Complainant was informed that after Vinayak was assaulted by means of skythe and sharp weapons like knife by other accused persons, the Applicant and one Ganesh Gaikwad, lifted a Mill Wheel to assault the injured Vinayak, who by the time had fallen to the ground in an injured condition, but while they lifted the said Mill Wheel, it broke down and, therefore, it is alleged that the Applicant and Ganesh

Gaikwad assaulted the deceased by means of broken pieces of the wheel on his back. After Vinayak was found to be unconscious and almost in a dead condition, all the assailants fled away from the spot. The said version is corroborated by the eye-witnesses being Sandip Gejge, Vikas Dhumal, Somnath Gade and Vishal. All the aforesaid witnesses, who have witnessed the incident attributed a similar role to the Applicant in company of Ganesh Gaikwad. When the postmortem report is perused, it records 17 injures in Column No.17 and the cause of death is opined to be “*Shock and hemorrhage due to stab injury over chest with multiple chop injuries over body associated with head injury*”.

4. Amongst the injuries mentioned in Column No.17, injury Nos.11, 12 and 13 are described as incised injuries present over back with the given description. *Prima facie*, the injuries can be attributed to the Applicant along with co-accused Ganesh Gaikwad.

5. While considering the Application for grant of bail for Ganesh Gaikwad, this court took note of the role assigned to him by the prosecution being assaulting by means of piece of Mill Wheel on the back of the deceased. The court records that Ganesh Gaikwad was not armed with weapon but assaulted on the back of the victim, however, in absence of the postmortem report being placed before the Court there is also a finding

recorded that there is no injury corresponding to the assault. This may not hold good in the light of the postmortem report now being placed before the court and particularly Injury Nos.11, 12 and 13, as referred to in Column No.17. However, on perusal of the cause of death, these injuries on the back have not contributed to the death of the deceased Vinayak. The aforesaid observations are merely *prima facie* in nature as ultimately, the medical experts will have to be examined and he will have to be testified in the backdrop of the opinion expressed by the postmortem report. Suffice it to say that since co-accused Ganesh Gaikwad is released on bail with an identical role attributed, there is no reason why the present Applicant should be denied the said benefit particularly, when he is incarcerated since long and, to be precise, from 10/12/2018. The Applicant is therefore, entitled to be released on bail on parity with Ganesh Gaikwad subject to the following conditions.

ORDER

- (a) The Applicant – **Gaurav @ Gogya Govind Bhambare** shall be released on bail in C.R. No.657 of 2018 registered with Bharti Vidyapith 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 stay out of jurisdiction of Bharti Vidyapith Police Station, Pune and shall furnish the details of his place of residence to the Investigating Officer after he is released on bail. He shall report to the nearest police station, where he would reside on first Monday of every month between 10.00 a.m. and 1.00 p.m. till further order.

6. The Application is allowed in the aforestated terms.

7. 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.)