

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1262 OF 2021

Dhananjay Shantaram Tope	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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Mr. Priyal G. Sarda for the applicant.
Mr. A.R. Kapadnis, APP for the State.
API P.K. Rathod from Chakan P.Stn, Pimpri Chinchwad present.

CORAM: BHARATI DANGRE, J.
DATED : 4th AUGUST, 2021

P.C:-

1 The applicant was arraigned as Accused no.3 in C.R.No. 1218 of 2020 registered with Chakan Police Station and on completion of investigation, he is charge-sheeted under Section 307, 325, 306, 324, 504, 341, 421, 143, 144, 147, 148, 149 of the IPC.

2 Learned counsel Mr. Priyal Sarda seek parity with co-accused Gaurav Tope who has been released on bail by this Court on 13th July 2021 taking into account his participation in the offence.

I am not persuaded to grant the benefit of the order passed by me on 13th July 2021 in case of Gaurav to the applicant for the reasons to follow.

Tilak

3 The complainant Ramdas Tope reported about an incident of 15th November 2020 when at around 6.30 p.m, the accused no.1 Santosh, the present applicant and other accused persons arrived in front of his house with packets of sweets in their hand. When Santosh was questioned as to why he was present there, he abused Abu.

 The background of the said incident being, the niece of the complainant was engaged and accused no.1 – Santosh had threatened that he would not let the marriage be solemnized. It is alleged that Santosh picked up a brick and rushed towards Abu, but the brick hit Dattatraya Tope. It is alleged that Dhananjay Tope assaulted Abu by a stick and when Govind Tope, Ananda Tope and Balu Kisan Tope intervened, co-accused Gaurav, Vishwanath, Keshav and Machindra Tope verbally abused them and assaulted them by wooden sticks, fists and blows. Thereafter, Chairman of Tanta Mukti arrived at his house and it is alleged that when the injured were being carried in a vehicle, Santosh, Dhananjay, Gaurav stalled the vehicle and pelted stones on the Wagon-R, thereby damaging it. It is this allegation which resulted in registration of the subject C.R.

4 Ramdas gave his supplementary statement on 17th December 2018 when he particularly named the accused persons. The Medico Legal Certificates of the injured were procured and compiled in the charge-sheet.

Deepak Tope sustained the following injuries

1. *C.L.W on Rt Temporo-frontal Area Size 10x7x4cm*
2. *C.L.W on Lt occipital area size 9x6x4cm.*
3. *fracture of distal and middle phalanx of RT little finger.*
4. *Contusion of Lt side of chest size 4x3x2 cm.*
5. *Multiple superficial contusion of abrasions on all over the body.*

Avinath Tope sustained two grievous injuries and one Simply Injury. The grievous injury being multiple CLW over scalp.

- 1 *Multiple CLW over scalp over occipital region, right temporal region, left temporal region, right side of forehead. Oral + nasal bleed.*
- 2 *Left elbow swelling having severe pain with restricted movement.*
- 3 *Contusion over back.*

Dattatraya Tope received one grievous injury in form of contusion over chest right sided with a Displaced fracture of 5th and 6th rib and one Simple Injury in form of CLW over forehead and occipital region. Another injured is Govind Tope who sustained three injuries, CLW over right middle finger, contusion over left fore arm and contusion on right pariorbital contusion. Balu Ananda Tope sustained two grievous injuries.

- 1 *CLW over occipital region, 4x0.5x0.5cm, 5 sutures taken.
CT brain : Hemorrhagic contusion in bilateral frontal lobe.*
- 2 *Right frontal lobe abrasion and contusion.*

5 The charge-sheet compile the statement of all the injured persons. The injured narrate the incident in two parts, the first part being the accused persons arriving in front of the house of Ananda Tope and Santosh picking up a brick to assault Abu @ Avinash when he questioned him about his arrival at their house and the said brick hitting Dattatraya. Ananda categorically state that Dhananjay – the present applicant assaulted Abu by stick. The contribution of other accused persons in the incident when they assaulted Govind and Balu when they intervened, is narrated in detail. The second incident is when the injured were taken to the hospital and for lodging a report in the Wagon-R of the Chairman of Tanta Mukti, the accused persons attacked the vehicle and the assailant was the present applicant and six other named persons in the company of 7 to 8 unknown persons. Santosh and Sandesh are alleged to be instigating the crowd and other accused persons being engaged in assault.

6 Several statements in the charge-sheet speak in sync with one another. The applicant is alleged to have assaulted Abu @ Avinash whose injuries are described above. The two injuries are grievous injuries located over occipital / temporal region. The CT Scan of the brain reveal Depressed comminuted fracture of the left parietal bone with soft tissue hematoma. The fracture is reported to be inwardly depressed for a distance of 6 mm. Similarly, the second grievous injury to the left elbow, on the CT

scan reflect swelling of soft tissues or elbow and in supra condylar region. The first injury being grievous one, reflect the knowledge on the part of the applicant that it may result into his death, and therefore, *prima facie* the charge against the present applicant under Section 307 is well established.

7 As far as Gaurav is concerned, the limited role is attributed to him being of abusing verbally. No doubt, a cross FIR is registered and injury is sustained by Gaurav, on reflecting a free fight and Gaurav himself was injured. However, the injury attributed to the applicant on Abu was a life threatening injury, which could have resulted in his death. In such circumstances, I am not inclined to entertain the application, the same is rejected.

SMT. BHARATI DANGRE, J