

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

BAIL APPLICATION NO. 1585 OF 2021

1. Abhijit Lahu Chandane
2. Aniket Lahu Chandane ... Applicants

Versus

The State of Maharashtra ... Respondent

**ALONG WITH
BAIL APPLICATION NO. 1586 OF 2021**

Swapnil Shripat Jadhav ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. Vinod Kashid, Advocate for the Applicants.
Mr. Y. M. Nakhwa, APP for the Respondent – State.
Mr. Balwant V. Salunkhe, Advocate for the Complainant.

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CORAM : PRAKASH D. NAIK, J.

DATE : 26th APRIL, 2021

PER COURT:

1. The applicants were arrested in C.R. No. 355 of 2020 registered with Kherwadi Police Station, Mumbai for offences under Sections 302, 307, 326, 324, 323, 504, 506(2), 143, 147, 148, 149 of Indian Penal Code (for short “IPC”)

2. The case of the prosecution is that there was quarrel

between the cousin of complainant and Swapnil Jadhav on 15th November 2020. On 16th November, 2020 Sonali Mohite (Sister-in-law of Swapnil Jadhav) came in front of the house of complainant and started abusing his family. The sister of complainant intervened. There was exchange of words between them. Sonali Mohite gave this information to her brother Rohit Jadhav and Rupal Mohite. Thereafter, Rohit Jadhav, Rupal Mohite and their friends Suraj Jadhav, Abhijit, Aniket, Swapnil, Sujal came in front of the house of the complainant. Rohit was holding knife. He assaulted complainant on his hand, head and abdomen. At that time complainant's father intervened to save him. Rohit Jadhav assaulted complainant's father with knife on his abdomen. Rupal, Aniket, Abhijit and Suraj pulled the complainant down on the floor. Suraj and Aniket caught hold of his hands and Rupal Mohite gave blow by tile on his head. Thereafter, the assailants ran away from the place of incident. Statement of witnesses were recorded during the course of investigation. The applicants were arrested. On completing investigation charge-sheet was filed. The applicants preferred application for bail before the Sessions Court which was rejected.

3. The co-accused Suraj Dharma Jadhav had preferred an application for bail before this Court vide Bail Application No. 996 of

2021. The said application has been allowed by order dated 15th March, 2021.

4. Learned advocate for the applicants submitted that applicants are falsely implicated in this case. Co-accused Suraj Jadhav has been released on bail by this Court. Role of the applicants are similar. No overt act is attributed to the applicants. There is no recovery of weapon from Abhijit Chandane and Aniket Chandane. Section 307 of IPC is not attracted. The complainant was taken to hospital for treatment and discharged on the next day. Applicants Abhijit Chandane and Aniket Chandane have not assaulted the complainant or deceased. The name of applicant Swapnil Jadhav is not mentioned in the FIR. He has been implicated in supplementary statement recorded belatedly. In the said statement it was alleged that the applicant Swapnil Jadhav had assaulted the deceased with iron rod on his head. However, Post-mortem report does not indicate any head injury. The statement of Rohit Waghmare do not refer to involvement of Swapnil Jadhav. The statements of other witnesses were recorded after a period of about 9 days from the date of incident. The C.C.T.V. footage collected by the Police is not clear. It does not relate to the incident of assault.

5. Learned APP submitted that the father of the

complainant has succumbed to the injuries sustained due to assault. The complainant was also assaulted. The involvement of all the applicants is disclosed during the course of investigation. They have been attributed overt act. C.C.T.V. footage supports the case of the prosecution. The applicants Abhijit Chandane and Aniket Chandane are named in the FIR. The applicant Swapnil Jadhav has been attributed overt act by the complainant. The other eye witnesses has shown his involvement. There was common object in commission of crime. The case of the co-accused to whom bail is granted can be distinguished. There is recovery of weapon from accused Swapnil Jadhav. C.C.T.V. footage shows him carrying weapon with him. There are eye witnesses to the incident. All the applicants are named by the witnesses as participants in crime.

6. Learned Advocate for the complainant opposed the application for bail. It is submitted that specific role has been attributed to the applicants/accused. The offence is of serious nature. The father of the complainant had died due to assault. The complainant has also sustained serious injury. Swapnil Jadhav has been attributed role of assault. He has assaulted the deceased on his head. His presence is established by the statement of witnesses as well as by C.C.T.V. footage. The other applicants are attributed

specific overt act of participating in the assault. The applicants are likely to tamper with the evidence.

7. I have perused the charge-sheet. The FIR was registered by Mohan Waghmare on 16th November, 2020. The case of the prosecution is that there was quarrel between the cousin of complainant Suresh Kshirsagar and Swapnil Jadhav. On the next day i.e. on 16th November, 2020 sister-in-law of Swapnil Jadhav abused the family of complainant. There was exchange of words between sister of complainant and sister-in-law of Swapnil Jadhav. Thereafter, Rohit Jadhav, Rupal Mohite, Abhijit Chandane, Aniket Chandane and Suraj Jadhav came in front of the house of complainant. Rohit Jadhav was armed with knife. He assaulted complainant on his hand, head and abdomen. The father of complainant intervened. He was assaulted on abdomen by Rohit Jadhav with knife blow. Rupal Mohite, Abhijit Chandane, Aniket Chandane and Suraj Jadhav accosted the complainant. Suraj and Aniket caught him and Rupal Mohite assaulted him by giving blow with tile on his head. The neighbours came to the spot. Hence, the accused ran away. The father of the complainant was taken to hospital. The complainant was also taken for treatment. Complainant's father was subsequently declared dead. From the FIR it is apparent that Swapnil Jadhav is not

referred as participant in the crime. His presence is not disclosed. The role of assaulting complainant by knife was attributed to co-accused. The father of complainant (deceased) was assaulted on abdomen by knife by co-accused. The applicants Abhijit Chandane and Aniket Chandane had allegedly pulled the complainant. He was caught by Aniket Chandane. Co-accused Rupal assaulted him with tile on his head. The role of assaulting the deceased is not attributed to Abhijit Chandane and Aniket Chandane. They were not armed with any weapon. The complainant's father had intervened in the incident after noticing that his son being assaulted by the accused.

8. C.C.T.V. footage from Pournima Super Market was recovered vide panchanama dated 29th November, 2020. The said panchanama indicate that the witness Suvarna Waghmare had identified the persons seen in the C.C.T.V. footage as Rupal, Rohit, Abhijit Chandane, Aniket Chandane, Suraj Jadhav and Swapnil Jadhav. According to her Swapnil was running with iron pipe. The panchanma does not indicate that C.C.T.V. footage is with regards to the incident of assault. Swapnil Jadhav was arrested and allegedly iron pipe has been recovered from him on 6th December, 2020. Supplementary statement of the complainant was recorded on 30th November, 2020, i.e. after of about 16 days from the date of incident.

In the said statement he stated that on 16th November, 2020 Swapnil Jadhav and his friends Rohit Jadhav, Rupal Mohite, Abhijit Chandane, Aniket Chandane, Suraj Jadhav, Sujal Jadhav assaulted him and his father. Rohit Jadhav assaulted him with knife. His father intervened. He was assaulted by Rohit Jadhav with knife. Rupal Mohite assaulted him with tile. Aniket assaulted complainant with paver block on his head. Abhijit Chandane, Suraj Jadhav, Sujal assaulted him and his father with fist and kick blows. Undisputedly, Swapnil Jadhav is known to the complainant. He was not shown participating in assault in FIR. His presence was also not referred. However, in the supplementary statement role has been attributed to him having assaulted on the head of the deceased. There is improvisation in the supplementary statement. Aniket Chandane has been attributed role of assaulting by paver block by the complainant. Role of assaulting by fist and kick blows was attributed to Abhijit Chandane and others. It is pertinent to note that Post-mortem report or inquest panchanama does not indicate any head injury to the deceased. Applicants Abhijit Chandane and Aniket Chandane were not armed with any weapon. The role of assaulting the father of complainant with fist blows is referred for the first time in the supplementary statement. It is also relevant to note that the statement of brother of complainant was recorded on 17th November,

2020 i.e. on 2nd day of the incident. In the said statement he has stated that Rohit Jadhav, Rupal Mohite, Abhijit Chandane, Aniket Chandane and Suraj Jadhav came in front of his house. Rohit assaulted complainant. Rupal assaulted complainant with tile. The father of complainant was assaulted by Rohit Jadhav. The neighbour arrived at the spot and hence the accused ran away from the place of incident. He has not referred to presence of the Swapnil Jadhav. No overt act is attributed to Abhijit Chandane and Aniket Chandane. Statement of Suvarna Waghmare was recorded on 25th November, 2020. She has stated that the complainant was assaulted by accused. Aniket Chandane was holding weapon like blade. Rohit Jadhav was holding knife. They assaulted complainant. Complainant was bleeding. His father intervened. Rohit assaulted him with knife. Thus, no role of assaulting the deceased was attributed to the applicants by the said witness. Statement of Smt. Harashla Dhavare was recorded on 25th November, 2020. She has stated that the complainant was assaulted by the accused. The assailants ran away from the place of incident. One of the assailant picked up the iron pipe and ran away. She would identify the said person if shown to her. The prosecution had not pointed out any parade being conducted to identify the person who was holding iron pipe. Co-accused Suraj Jadhav has been granted bail by this Court vide order

dated 15th March, 2021. Considering these circumstances, bail can be granted to the applicants. Hence, I pass the following order :-

ORDER

- (i) Criminal Bail Application Nos.1585 of 2021 & 1586 of 2021 are allowed;
- (ii) The applicants are directed to be released on bail in connection with C.R. No.355 of 2020 registered with Kherwadi Police Station, Mumbai on executing PR. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall stay out of jurisdiction of Kherwadi Police Station till further order.
- (iv) The applicants shall furnish the details of their residence after they are released on bail to the Investigating Officer.
- (v) The applicants shall not tamper with the evidence and shall not approach the complainant or any other witnesses.
- (vi) The applicants shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court.
- (vii) The applicants are permitted to furnish provisional cash bail security in the sum of Rs.25,000/- each for a period of twelve weeks in lieu of surety.
- (viii) Bail Applications Nos.1585 of 2021 & 1586 of 2021 are disposed of accordingly.

(PRAKASH D. NAIK, J.)