

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

CRIMINAL BAIL APPLICATION NO.1945 OF 2021

Aniket Suresh Patil	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Sudatta J. Patil for the Applicant

Mr. H. J. Dedhia, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 1st OCTOBER 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No.152/2020 registered with the Sangli Rural Police Station, Sangli, for the alleged offences punishable under Sections 302, 364, 323, 324 r/w 34 of the Indian Penal Code and under Sections 37(1)(3) and 135 of the Maharashtra Police Act.

3 Perused the papers. According to the complainant, the incident took place in the intervening night of 27th and 28th July 2020. According to the complainant, on 27th July 2020 at about 9:30 a.m, one of the JCB machines of the complainant was sent for the work of Avinash Nalawade on the plot, in front of Shabbir Shaikh's (original accused No.1) house at Hakke Colony, Kavalapur. Deceased-Kundan Kumar was sent as a driver on the said JCB machine. At around 1:00 p.m, Shabbir Shaikh (original accused No.1) called the complainant and disclosed to him that there is some complaint against the plot owner-Avinash Nalawade and told the complainant to turn off his JCB machine, pursuant to which, the complainant called Kundan Kumar and told him to stop the work and come back home with the JCB machine. At around 2:30 p.m, Kundan Kumar returned home with the JCB machine. At around 6:15 p.m, the complainant received a call from Shabbir Shaikh (original accused No. 1) on his mobile, who told him that he wanted to meet him. It is the prosecution case that at about 8:45 p.m, Shabbir Shaikh (original accused No.1) called the complainant again and told him that Kundan Kumar has molested his daughter and asked him to speak to Kundan Kumar. The said information was conveyed by the complainant to the Supervisor-Yogesh Nalawade and he was asked to inquire into the same. Yogesh Nalawade inquired with Kundan Kumar and thereafter, told the complainant that no

such incident had occurred as narrated by Shabbir Shaikh (original accused No. 1). After a while, complainant received a call from Shabbir Shaikh to ask him whether they had inquired with Kundan Kumar, to which, the complainant replied that they had inquired and that Kundan Kumar had denied any such incident. Shabbir Shaikh is stated to have told the complainant, that his wife had seen Kundan Kumar touching the daughter inappropriately. Shabbir Shaikh asked the complainant to get Kundan Kumar with him and come to Vimantal spot. At about 9:30 p.m, complainant sent Kundan Kumar, Yogesh Nalawade and Rahul Jagtap on his motorcycle to meet Shabbir Shaikh, at the Vimantal spot. According to the complainant, Kundan Kumar had told Yogesh Nalawade that he had molested Shabbir Shaikh's daughter, pursuant to which, the complainant asked Yogesh Nalawade to go to the Vimantal spot. Since the complainant was also called to the Vimantal spot, he went there on his motorcycle with his friend Bharat Mali at about 10:00 p.m. The complainant has stated that he saw Shabbir Shaikh and his companions Vishal Mane, Aniket Patil (present applicant) and Ganesh Patil on the spot. He has further stated that after sometime, Kundan Kumar, Yogesh and Rahul reached the said spot and dropped Kundan Kumar and thereafter, Yogesh and Rahul left the said spot. The complainant has stated that Shabbir Shaikh started assaulting Kundan Kumar with fist and kick blows and asked him whether he had

molested his daughter. However, the deceased kept denying the same. It is alleged that Shabbir Shaikh pulled out a knife from his pocket, however, the complainant asked Shabbir Shaikh to stop. It is further alleged by the complainant that Shabbir Shaikh and his friends including the applicant forcefully put the deceased in a car and again left the spot. After half an hour, Shabbir Shaikh and his friends including the applicant and the deceased returned back to the Vimantal spot in the same car. The complainant has stated that when Shabbir Shaikh asked him to go home, he asked Shabbir Shaikh not to assault the deceased, as he wanted to send him to work on the next morning. The complainant has stated that later, at around 11:30 p.m, Shabbir Shaikh called him up and told him that Shabbir Shaikh and his friends had taken the deceased to his house and stabbed him in a Scorpio car.

4 There are eye-witnesses to the said incident of assault. A perusal of one of the eye-witness's statement i.e. Sagar Patil shows that all the accused including the applicant assaulted the deceased with fist and kick blows and that the applicant pulled out a knife and assaulted the deceased with the knife. The statements of the eye-witnesses are recorded both under Sections 161 and 164 of the Code of Criminal Procedure. The post-mortem report reveals that the deceased had sustained 4 incised

injuries and the cause of death was stated to be trauma to vital organs due to stab injury.

5 Although, learned counsel for the applicant submits that there was no motive for the applicant to cause the death of Kundan Kumar, however, the facts reveal that the deceased was in the custody of the applicant and other accused for quite some time, since 11:30 p.m. on 27th July 2020. It is also not a case of a single blow. The applicant has not assaulted the deceased once, but four times, causing serious injuries to the vital organs.

6 Considering the aforesaid, this is not a fit case to enlarge the applicant on bail. In the facts, the possibility of the applicant threatening or intimidating the witnesses cannot be ruled out. The application is accordingly rejected.

7 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.