

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

CRIMINAL BAIL APPLICATION NO. 993 OF 2020

Avinash Babu Chavan

...Applicant

Versus

The State of Maharashtra

...Respondent

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Mr. Rajiv Patil, Sr. Advocate i/b Ms. Sangeeta Dalvi, Advocate for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 12th MARCH, 2021.

PC :

1. This is an application for bail in connection with C.R. No. I 104 of 2017 registered with Narpoli Police Station for the offence punishable under Sections 302, 307, 324, 452 read with 34 of Indian Penal Code and Section 37(1) and Section 135 of Maharashtra Police Act.

2. The case of the prosecution that on 12th March, 2017, informant Rajkumar, his brothers and others had slept in their room. At about 11.30 p.m. they heard noise. They all got up and came out of their room. They noticed that Sagar, Vijay, Aakash and Avinash were playing cards in front of the house of Dineshkumar. He had

objected and hence there was quarrel. Complainant intervened and pacified them. At about 11.45 p.m. deceased Rajan went out for answering nature's call. Accused knocked the door. Vijay, Akash, Sagar and Avinash were knocking door. Complainant did not open the door. They broke open the door by kicks, wooden stick and iron rod and entered into the house. Vijay Rathod assaulted Rajkumar Shilpakar by means of knife on his neck and wrist. Akash had assaulted Rajkumar by wooden stick and accused Sagar Rathod assaulted by iron rod and Avinash assaulted by wooden stick Shivkumar, Raju, Rampratap and Sureshkumar while they were running away. Rajan Shilpakar was returning home. At that time, accused Vijay stabbed him on his chest, back and waist by knife. Akash, Sagar and Avinash (applicant) assaulted him by iron rod and wooden stick. Injured were referred to Civil Hospital, Thane. Rajan Shilpakar succumbed to injuries.

3. Learned counsel for the applicant submits that applicant is in custody for more than two years. Injuries reflected in the inquest panchanama and the postmortem report do not support the prosecution case. Medical evidence does not support the prosecution case. The application of co-accused was rejected since, he was holding iron rod. Applicant was armed with stick.

4. Learned APP strongly opposed the application for bail. It is submitted that Specific overt act has been attributed to the applicant. He has participated in assault.

5. On perusal of the chargesheet, it is apparent that applicant has participated in assault. Submission advanced by the learned counsel for the applicant cannot be considered at this stage. Although applicant was allegedly armed with stick, the manner in which all of them barged into house of complainant by breaking door, assaulting witnesses and thereafter assaulting deceased is required to be considered. The application of Sagar Rathod has been rejected by this Court vide order dated 25th January 2019. Merely on the ground that applicant had used stick, his case in the fact of the present case, cannot be distinguished. Hence, application for bail is required to be rejected.

6. Criminal Bail Application is rejected and disposed off. Trial has been expedited while rejecting application of co-accused Sagar Rathod. Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)