

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

**INTERIM APPLICATION NO.1590 OF 2021
IN
CRIMINAL APPEAL NO.544 OF 2021**

Ajay Ramniklal Shah

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Keshav Chavan for the Applicant.

Mrs. S. V. Sonawane, APP for the Respondent-State.

**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 26 JULY 2021.

P.C.

Heard the learned Counsel for the Applicant and the learned APP. The Applicant was arraigned as accused No.5 in Sessions Case No.777 of 2013 and tried by the learned Sessions Judge, Greater Mumbai and was convicted for the offence punishable under section 302 read with 149 of Indian Penal Code and is sentenced to undergo imprisonment for life.

2. According to the prosecution the incident occurred on 20 May 2013 where the accused and his three colleagues confronted the complainant and Deceased Ganesh in respect of

death of a girl in the locality due to collapse of the wall. There was a scuffle. The persons who gathered there intervened. Thereafter while the complainant and the Deceased Ganesh after registering a complaint against the accused were leaving the police station, accused confronted them and assaulted the complainant and the Deceased with knife. Deceased Ganesh succumbed to the injuries. Accused was tried and conviction was recorded as above.

3. The learned Counsel for the Applicant submitted that the role of the present Applicant is distinct and nothing is attributed to the Applicant and the complainant-PW-1-Umesh Gaikwad is not supporting the prosecution.

4. We have perused the evidence of PW-2-Babu Jilhapuram and PW-12-Amol Kadam, the eye witnesses. PW-2-Jilhapuram has deposed that all the accused surrounded the Deceased Ganesh and the Applicant asked the Deceased as to why he had broken his vehicle. PW-12-Amol Kadam has deposed that the Applicant caught hold of the Deceased from the side and the other accused gave blow on the waist near abdomen of the Deceased and thereafter the Deceased was assaulted. As regards the presence of the accused when the assault took place, the presence of other accused is deposed by these two witnesses. Merely because PW-2-Jilhapuram has not stated as regards the assault about the role of the Applicant in holding the Deceased

does not mean that at this stage evidence of PW-12-Kadam can be ignored. The only contradiction brought is regarding on which side of the body the Applicant caught hold of the Deceased which is not material. Further as per the prosecution, panch witness has deposed and the panchanama states that there was recovery of the blood stained clothes at the instance of the Applicant of the blood stained clothes.

5. Therefore the presence of the Applicant at the spot and the role of the Applicant in the assault has been demonstrated by the prosecution. Further there is recovery at the instance of the Applicant. Therefore no case is made out for grant of bail.

6. The learned Counsel for the Applicant submitted that the Applicant suffers from heart ailment and during trial he was released on temporary bail to undergo a treatment. As regards this aspect, nothing is placed before us to demonstrate this medical condition and need for treatment continues. It is open to the Applicant to file an application on this limited ground after adducing cogent material in support thereof.

7. The application is accordingly rejected.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)