

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2546 OF 2021

Rohit Sanjay Shirsat

.. Applicant

Versus

The State of Maharashtra

.. Respondent

...

Mr. Bhushan Deshmukh for the applicant.

Mr.S.S. Pednekar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 17th AUGUST, 2021

P.C:-

1 The applicant who is charge-sheeted in C.R.No. 293 of 2020 registered with Lasalgaon police station for the offence punishable under Section 302, 307, 323, 143, 147, 149, 188, 269, 270 r/w 34 of the IPC and Section 25(4) of the Arms Act, while seeking his release on bail, claim parity with co-accused Firoz Shaikh by this Court on 18th June 2021 vide Criminal Bail Application No.1409 of 2020.

 The submission is the present applicant is Accused no.4 whereas Firoz Shaikh is Accused no.2 and the role assigned to both the accused by the complainant the eye witness is identical and the observations made by this Court qua Firoz

Shaikh also hold good as against the present applicant.

2 The subject C.R came to be registered with the police station on a complaint filed by one Akash Sejwal, resident of Lasalgaon, working as a Driver. He report of an incident dated 16th June 2020 when he arrived in Lasalgaon after dropping his family members at Chandwad and was accompanied by his friend Chetan Bairagi. While he was enroute his house, he noticed that in front of the flour mill of Sandeep Jadhav in Indira Nagar, 10 – 15 people had assembled, and in order to fine out a way, he honked. The informant has named five persons which include the present applicant and Firoz who were celebrating birthday of Sahil Shaikh. When their car moved ahead, somebody pelted a stone on its rear side which prompted him to bring it to halt. He opened the door and was about to alight, at that time, Arun Mali (Accused No.6), Sahil (Accused no.1) pulled him out by yelling at him as to why he was honking. He fell down and it is alleged that he was assaulted by accused persons including the present applicant by means of kicks and blows. The complainant narrate that Accused no.1 Sahil assaulted him by means of a pointed weapon and the blows were given on his waist and thigh. His friend Chetan Bairagi also alighted from the car when Accused no.1 and the other assailants rushed towards him and assaulted him. The informant being injured, proceeded towards Chetan, who was lying on the ground and was profusely bleeding in his

stomach and was in an unconscious condition. Thereafter, some people came to rescue and carried the injured to the hospital. The friend of the informant, Chetan Bairagi succumbed to the injuries and the post mortem report opine the cause of death as *“Haemorrhagic Shock due to stab injuries to Abdomen which is sufficient to cause death in ordinary course of nature. All injuries are antemortem in nature, fresh in duration. Injuries are caused by single edged sharp pointed weapon”*

3 Column no.17 of the post mortem report mention about six injuries which are in form of incised and stab wounds. As far as the complainant is concerned, he sustained stab injury on back of left thigh and a CLW of gluteal region of left side and he came to be discharged from the hospital on the very same day after taking preliminary treatment.

4 During the course of investigation, the statements of eye witnesses were recorded and they are compiled in the charge-sheet. One Sachin Balu Vinchu who is the owner of the Flour Mill was sitting outside his house after the mill was closed and he was informed by the small children that some scuffle is taking place in front of *kirana* shop and that one Akash was being beaten. At that time, he accompanied by Sagar and his mother who reside in their neighbourhood approached the spot and witnessed that all the named accused persons were assaulting

Chetan and Akash by fists and blows. Accused no.1 Sahil was armed with a sword and Arun Mali was having a knife in his hand. The witness pushed Accused no.1. At that time, Arun Mali gave a blow on the thigh and waist of Akash by knife in his hand and while Akash was pulled out of the crowd, it is alleged that Arun assaulted Chetan Bairagi by means of knife and was given multiple blows causing bleeding injuries to Chetan.

One Saurabh Shinde also gave his statement which is compiled in the charge-sheet, where he alleged that accused no.1 assaulted the informant by means of a sword and Arun Mali assaulted him by means of a knife on his thigh and waist. Chetan Bairagi who intervened in the scuffle was assaulted by Arun Mali by means of a knife, which caused severe injuries and he fell down. Jeevan Pagare speak in sync with the other two witnesses. Another statement is of Siddharth Jorwekar and he was present in the mob when the birthday celebration of Sahil was in progress. Sahil is alleged to have been armed with a sword and he cut the cake by the sword. At that time, one Ertica car arrived at the spot and he thereafter, narrated the happenings when the informant Arun and the deceased Chetan was assaulted. The statements of Meena Sejval, Sandeep Jadhav, Sagar Sejval who narrate the incident as being witnessed by them are also compiled in the charge-sheet.

5 Perusal of the statement of witnesses compiled in the

charge-sheet refer to the present applicant as being present on the spot and who assaulted the complainant by means of kicks and blows. All the witnesses are very specific about the injury to the complainant being caused by Arun Mali and the deceased being assaulted by Arun. The charge-sheet also reveal that there is recovery of the knife from the accused Arun and a sword with 3 ft length from accused Sahil Shaikh (A1).

6 It is no doubt true that the applicant is also charged under section 149 and the consequences of the act of murder of Chetan and causing deadly injury to the complainant will fall upon all those who were present on the spot with the aid of Section 34 and particularly, when the common object is established by the prosecution. *Prima facie*, as per the case of the prosecution, there was no pre-meditation and the incident took place at the spur of the moment when the informant along with the deceased arrived at the spot where the birthday celebration of Accused no.1 were in progress.

7 Co-accused Firoz Shaikh is released on bail, observing the manner in which the quarrel emanated suddenly and revealing that he was not armed with any weapon. There is no reason why the same analogy cannot be made applicable to the present applicant who has been arrested since 17th June 2020 and on the investigation being completed and charge-sheet being filed,

continue to remain incarcerated. The applicant therefore deserve to be released on bail subject to the following stipulation :-

O R D E R

- (a) The Applicant – Rohit Sanjay Shirsat in connection with C.R.No. 293 of 2020 registered with Lasalgaon Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (d) The Applicant shall mark his present in the Sessions Court once in every three months till the charge is framed and thereafter, act in terms of the directions issued by the Sessions Court.

8 The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J