

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

CRIMINAL BAIL APPLICATION NO. 1320 OF 2020

Shubham Dattatraya Netake

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Priyal G. Sarda for Applicant.

Mr. S. H. Yadav, APP for State/Respondent.

Mr. S. B. Kharat, HC, Khed Police station, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th JANUARY, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 229 of 2017 registered at Khed police station, Dist. Pune, on 24/06/2017 under sections 143, 147, 148, 307, 302, 324, 323, 504 and 506 r/w. 149 of the Indian Penal Code (for short 'IPC') and under section 135 of Maharashtra Police Act.

2. Heard Shri. Priyal Sarda, learned counsel for the applicant and Shri. Yadav, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by Mangal Netke. The prosecution case is that, on 23/06/2017 at about 8:00p.m., in Netke vasti, village Davdi this incident had taken place. Accused Ankush – applicant's brother, applicant himself, Dattatraya – applicant's father, Sangeeta – applicant's mother, Sunita and Sakhubai formed an unlawful assembly and mounted assault on the family of the first informant Mangal Netke. In the incident, Mangal's husband Madhukar was assaulted on his head and he succumbed to his injuries on 02/07/2017. In the incident, Navnath, Gorakh, Prafulla and informant herself had also suffered injuries.

4. The First Information Report (for short 'F.I.R.') is lodged by Mangal Netke as mentioned earlier. She has stated that, before the actual incident, initially there was some quarrel between the applicant and the informant's son Prafulla. There was some altercation between them. The informant's husband Madhukar was told by her about the incident. Madhukar, in turn, went to the house of the applicant to question the applicant's parents. At that time, the quarrel escalated. It is alleged that,

applicant and his family members used iron rods and axe and assaulted all the aforesaid members of the informant's group. The injured were taken to the hospital and then this F.I.R. is lodged. The F.I.R. does not ascribe any particular role to any of the accused. However, the informant's supplementary statement recorded on 14/07/2017 mentions that the applicant gave a blow with an axe on Madhukar's head. The applicant also assaulted Gorakh near his ear and then Prafulla was assaulted. The applicant was arrested on 29/06/2017 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

5. The learned counsel for the applicant submitted that the informant who was an eye witness to the incident has not attributed any specific role or weapon to the applicant in the F.I.R. It is only after 21 days, in the supplementary statement for the first time she has attributed an assault with an axe on the head of the deceased. He submitted that, statements of the other eye witnesses show that the applicant's brother Akshay had given a blow with an iron rod on the head of the deceased and, therefore, the applicant cannot be held responsible for the head injury. The postmortem

notes show that there was only one head injury. Though, initially, injury certificate shows that there was two head injuries, but postmortem notes were clear enough mentioning only one injury. He submitted that, death was due to septicemia and the deceased had survived for a few days therefore, that blow was not very forceful. He submitted that the applicant's family has lodged their own F.I.R. in respect of the same incident. In that incident the applicant's mother was indecently treated, her modesty was outraged by Prafulla, therefore, this incident had taken place. The fact that, informant's father suffered fracture on his leg is not mentioned by the informant in this case and, therefore, prosecution case is not entirely true.

6. The learned APP opposed this application. He submitted that, there are many eye witnesses to the incident who have consistently deposed about participation of the applicant and his family in the incident. Not only the deceased, but others were brutally assaulted and, therefore, applicant should not be granted bail. He submitted that the weapons were recovered at the instance of the applicant from near his house.

REASONS:

7. With the assistance of learned counsel for the applicant and learned APP, I have perused the charge-sheet. As rightly submitted by the learned counsel for the applicant, the F.I.R. does not attribute any specific role or weapon to the present applicant, except mentioning that all of them from the applicant's group assaulted the informant's group. The supplementary statement of the informant recorded for the first time on 14/07/2017 mentions that the applicant had given a blow with an axe on the head of the deceased. In this context, the statement of Laxmibai is important. She was the mother of the deceased. Her statement was immediately recorded on 24/06/2017. She has stated that the deceased was given a blow of iron rod on his head by Akshay, because of which the deceased fell down. It had caused bleeding injury. This witness has stated that the applicant had given blow with an axe on Gorakh's ear. Thus, this witness, at the first instance, has not attributed any role to this applicant of assault on the deceased.

8. The injured Prafulla's statement recorded on

14/07/2017 again attributes two blows on the head of the deceased by the applicant and his brother. But this statement is recorded on 14/07/2017 on the same day when the supplementary statement of the first informant is recorded.

9. Apart from that, the other eye witnesses have narrated about the incident in an identical manner. Apart from the injured eye witnesses, other eye witnesses had reached the spot after the actual assault had taken place. The injuries suffered by the injured show that Gorakh had suffered blunt trauma on his head and there was suspected temporal bone fracture. These injuries are described as grievous injuries. Prafulla had suffered four simple injuries. Mangal had suffered three simple injuries. Navnath had suffered one grievous injury on his face and two simple injuries.

10. The applicant is in custody since July 2017, therefore, the injuries suffered by the deceased is important and it has to be seen whether there is sufficient material to fix the role to the applicant of causing fatal injury. As pointed out by the learned counsel for the applicant, postmortem notes do show that there was only one injury on the head of the deceased. Most of the eye

witnesses have attributed that injury to the applicant's brother Akshay. The death was due to septicemia in the operated case of head injury.

11. The other important aspect is that, there was a counter case regarding the same incident and in that case the applicant's father had suffered fracture of his leg. This important aspect is not explained by any of the eye witnesses from the informant's side. Another important aspect is that, even as per F.I.R. the informant and her family members had gone to the applicant's place questioning the applicant's parents about the earlier part of the incident. Therefore, there is scope to believe that the informant's family were the aggressors. In that case, there is a possibility that the offence attributable to the present applicant is a lesser offence and not the one punishable under section 302 of I.P.C. The applicant is already in custody since 02/07/2017. At the time of incident the applicant was 22 years of age and he was studying in last year of B.E. Mechanical Engineering. His further custody for investigation purposes is not required. The trial is likely to take long time even to commence. Therefore, I do not find it

appropriate to permit his custody for the entire duration of the trial. The applicant deserves to be released on bail.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No. 229 of 2017 registered at Khed police station, Dist. Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The applicant shall attend the concerned police station once every month to mark his presence till conclusion of the trial.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)