

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

CRIMINAL BAIL APPLICATION NO.1366 OF 2020

Amit Mithulal Chauhan	 Applicant
Versus	
The State of Maharashtra	 Respondent

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WITH

CRIMINAL BAIL APPLICATION NO.1199 OF 2021

Shailendra Lalji Yadav	 Applicant
Versus	
The State of Maharashtra	 Respondent

Mr. Mithilesh Mishra, Advocate i/b. Advait Shukla, for the Applicant in BA/1366/2020.

Mr. Rajendra Rathod, Advocate a/w. Amir Karodia, for the Applicant in BA/1199/2021.

Smt. M.R. Tidke, APP for the Respondent-State in both BA.

CORAM : SARANG V. KOTWAL, J.

DATE : 16th JULY, 2021
[Through Video Conferencing]

P.C. :

1. Both these applications are decided by this common order because they arise out of the same offence and the same investigation. For convenience, both the applicants are referred to by their names.

2. The applicants are seeking their release on bail in connection with C.R.No.416/2019 dated 21.7.2019 registered at Powai police station, Mumbai under Sections 302, 326, 324, 143, 147, 109, 149 read with 34 of the Indian Penal Code and under Section 37 of the Maharashtra Police Act. The Applicant–Amit was arrested on 22.7.2019 , whereas applicant–Shailendra was arrested on 21.7.2019. Since then, they are in custody. The investigation is over and the charge-sheet is filed.

3. Heard Shri Mithilesh Mishra, learned counsel for the Applicant in Bail Application No.1366/2020, Shri Rajendra Rathod, learned counsel for the applicant in Bail Application No.1199/2021 and Smt. M.R. Tidke, learned APP for the State in both Bail Applications.

4. The prosecution case is unfolded through the FIR lodged by an eye witness first informant Ajay Hawale. His FIR dated 21.7.2019 mentions that he was knowing one Vinod Pal, also known as “Kali” since past eight years. The informant was also knowing both the applicants. On

22.1.2019, there was a quarrel between Kali on one hand and both the applicants on the other. At that time, the others had pacified both the parties.

5. On 20.7.2019, at about 8:30 p.m., Kali called the informant and told him that Amit had stolen Kali's friend's mobile phone and that Kali and that friend were coming towards the informant's area. At that time, both the applicants came there. The applicant Shailendra is named as Nannu. When Kali reached there the informant and Kali started abusing Amit. He was caught near "Gold Coin Building". Kali requested the applicant Amit to return the mobile phone. However, Amit ran away from there. Kali again caught him. It is the case of the informant that at that time Amit called somebody and told the receiver of the call to come near Ramabai Nagar as it was required to teach lesson to the other side. Within short time, police van came there. Amit was handed over in custody of police. Kali and the informant were standing there itself. At about 9:00 p.m., the applicant Shailendra, named as Nannu, came there along with

3 to 6 persons and straightaway started assaulting Kali. The applicant Shailendra @ Nannu slashed left cheek of Kali. The others assaulted Kali with iron rod and bamboo. The unknown person accompanying them stabbed Kali on his chest. Kali suffered injuries. The assailants gave blows to the informant also. After that, the informant carried Kali to Rajawadi Hospital but he was declared dead.

6. Learned counsel appearing for the applicant Amit submitted that even as per the police case the applicant Amit was in the police custody at the time of actual incident of assault. None of the eye witnesses has even stated that the applicant has taken any part in the assault. He submitted that the telephone call attributed to the present applicant was quite vague and it was impossible that the applicant would have called anybody when he was apprehended by other side. He, therefore, submitted that in any case the phone call does not indicate that the applicant had directed or instructed others to commit murder of the deceased Kali.

7. Learned counsel appearing for the applicant

Shailendra submitted that the main role of assault was attributed to the unknown persons accompanying the present applicant. The present applicant is not attributed any other role except slashing the deceased on his cheek and on other non-vital parts. He submitted that the applicant is in custody since 21.7.2019. Considering his young age, leniency may be shown to him as the trial is likely to take very long time to commence. He submitted that the alleged recovery of the cutter at the instance of the applicant Shailendra is a fabricated piece of evidence. The applicant was immediately shown arrested after the incident. Therefore, there was no occasion for the applicant Shailendra to go home and conceal that cutter in his house.

8. Learned APP strongly opposed these applications. She submitted that, as far as the applicant Amit is concerned, there are nine antecedents against him. She submitted that the Amit's role to some extent is described in the FIR itself. She further submitted that there is overwhelming evidence against the applicant Shailendra and, therefore, bail should

not be granted to both of them.

9. I have considered these submissions. With the assistance of learned counsel for the parties I have perused the charge-sheet.

10. The postmortem injuries show that the deceased had suffered ten injuries. They were in the nature of stab injuries and incised wounds. There were incised wounds on the left side of face, right arm, elbow joint and on the chest as well. There were other stab injuries. These incised wounds are directly attributed to the applicant Shailendra. Therefore, though the stab wound to the chest is not directly attributed to the applicant Shailendra, there is sufficient evidence to show that he has taken part in the assault in furtherance of the common object of assembly and definitely with common intention with others to commit murder of the deceased. Leaving aside the recovery at the instance of the applicant Shailendra, even otherwise there is sufficient evidence in the form of eye witnesses against the present applicant – Shailendra.

11. There is statement of Rajkumar Giri, who had seen the incident of assault on Kali, but, he was not knowing the assailants.

12. There is another injured witness Asif Shaikh, but he has not named the assailants.

13. Aman Shaikh has himself given his statement on 3.8.2019. He has described the incident in which the applicant Shailendra and others had assaulted the deceased Kali. This witness has described the manner in which the applicant Shailendra had assaulted the deceased on his left cheek and right hand. Therefore, this witness is important.

14. Similarly there was another statement of Rahul Tirawa. He has also similarly described the role of the applicant Shailendra. He has described as to how the applicant Shailendra has given blows with cutter on the deceased. Hence there is sufficient material against the applicant Shailendra and he does not deserve to be released on bail.

15. As far as the applicant Amit is concerned, FIR itself mentions that after the initial incident of chase by the deceased, the applicant Amit was apprehended and the police had taken him in their custody. Even as per the prosecution case the applicant Amit had not taken part in the assault on the deceased Kali. The phone call attributed to the applicant Amit also does not indicate that the applicant Amit had instructed or instigated others to commit murder of Kali. It cannot be said that he had shared common intention. He was not even present at the spot of incident of assault and he was not part of the unlawful assembly. Therefore, Sections 34 and 149 of IPC are not attracted against him. The contention that he had criminal antecedents can be considered but all these offences are from the years 2014 to 2019. Therefore reasonable restrictions can be imposed on him while granting bail.

16. Considering this discussion, the applicant Amit has made out a case for his release on bail. Hence, the following order :

ORDER

- (i) Criminal Bail Application No.1199/2021 preferred by applicant Shailendra Yadav is rejected.
- (ii) Criminal Bail Application No.1366/2020 preferred by the applicant Amit Chauhan is allowed. In connection with C.R.No.416/2019 dated 21.7.2019 registered at Powai police station, Mumbai, the Applicant Amit Chauhan 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.
- (iii) Both the applications are disposed of accordingly.

(SARANG V. KOTWAL, J.)