

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3049 OF 2021

ATUL AMRUT MOHITE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.Owais T. Jahagirdar, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

CORAM : V. G. BISHT, J.

**RESERVED ON : 17th NOVEMBER 2021
PRONOUNCED ON : 26th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.121 of 2016 registered with Police Station Dighi, Pune, for offences punishable under Section 143, 147, 148, 149, 302, 363, 201 of the Indian Penal Code (IPC), under Section 4(25) of

AVK

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the Arms Act and under Section 37(1) read with 135 of Maharashtra Police Act.

2 The prosecution case in nutshell is that on 15th July 2016, at about 3.30 a.m., Shubham Fuge, informant and son of Dattatraya (deceased for short) lodged report contending that on 14th July 2016 a phone call was received by him from applicant requesting him to bring his father i.e. the deceased for the birthday of one of his friend at Dighi. At about 11.30 p.m., while the informant along with his friend, namely, Rohan Panchal, was proceeding towards Dighi, the informant saw his father being assaulted by the applicant in an open space with a huge stone on the head and further saw accused Babu Walke assaulting his father with a stone. It is further alleged that Babu Walke was accompanied by his two nephews – one who was armed with sattur was assaulting the deceased and the other person was armed with sword and he was assaulting the deceased with a sword. It is further alleged that accused Shailesh was assaulting the deceased with fist and kick blows and Prem Dholpuria was assaulting the deceased with some deadly

weapon. Similarly, accsued Babu Walke had assaulted with a chopper and all of them were accompanied by another two persons. All the assailants then fled from the spot.

3 Mr.Jahagirdar, learned counsel for the applicant, submits that seven accused have already been released on bail. One of them is accused Sushant. The role of said accused Sushant and that of the applicant is similar. The learned counsel also invited my attention to the statement of Mahesh Suryawanshi, who according to him, is a chance witness and his statement is not consistent with the statement of the informant. Thus, for all these reasons, the applicant deserves to be released on bail, argued learned counsel.

4 Mr.Dedhia, learned APP, submits that the applicant on the date of incident was on inimical terms with the deceased. There is direct evidence in the form of statement of witness, namely, Mahesh Suryawanshi, who had seen the applicant and other accused assaulting the deceased, apart from the statement

of informant. Offence being serious one, the application deserves to be rejected.

5 Perused the investigation papers including the First Information Report (FIR), statement of informant, his friend Rohan Panchal and the material witness Mahesh Suryawanshi, whose statement is pressed into service by the learned APP.

6 According to the informant there were 9 assailants. He also claims to have seen the incident involving the applicant and other accused. It may not be out of place to mention here that the statement of informant and his friend Rohan Panchal's statement were recorded immediately after the incident whereas the statement of Mahesh Suryawanshi was recorded on the next day. There is doubt in respect of presence of the informant and his friend at the place of incident, for which the reasons, I would be discussing later on. Before that, I may note from the statement of Mahesh Suryawanshi that there were four assailants. According to this witness, applicant and Shaukat

Attar were assaulting the deceased by means of stones. Of them, Shaukat Attar is already released on bail by the trial Court. Interestingly, informant or for that matter his friend Rohan do not say anything about accused Shaukat Attar.

7 Now there is two sets of statement. While informant's statement shows that there were nine assailants, the statement of Mahesh Suryawanshi, who was passing through the place of incident and thus a chance witness, shows that there were only four assailants. Next is the statement of wife of deceased, who after having received the information of the incident, had rushed along with her daughter Pratiksha Shivaji Borade and her son-in-law Shivaji Borade. There is also statement of Pratiksha Shivaji Borade on record. Interestingly, statement of both these witnesses nowhere show the presence of Rohan Panchal at the place of incident, although it is claimed by the informant that he was with him.

8 Coming to the important aspect of the case that is whether the informant was present at the place of occurrence or not, I may point out certain observations from the order of this Court (Coram : Smt.Sadhana S. Jadhav) passed on 22nd January 2018 whereby accused Prem @ Kakka @ Pramod Santaram Dholpuriya was released on bail. Following are the observations :

“9 Upon perusal of the papers of investigation, more particularly the statement of the sister of the complainant and the mother of the complainant as well as the brother-in-law who had reached first in point of time, it is clear that when they reached the spot, they had not seen Rohan Panchal along with the present applicants and Shubham was alone who was crying. Therefore, respective counsel submit that Rohan Panchal happens to be a got up witness only to corroborate the version of the complainant. It is also clear from the papers of investigation that there was no electricity supply in Bharatmata Nagar area at the relevant time. The call details record would clearly indicate that the applicant Dholpuriya was not in

Dighi area at the relevant time nay it is relevant to observe that the call details record of the complainant would also indicate that he was not in Bharatmata Nagar between 11 to 11.30 p.m. It is further pertinent to note that the investigating agency has not placed on record the station diary to show that at what time they had received the phone call from the cellphone of the complainant. There are eye-witnesses who would also substantiate the contentions of the present applicant to the extent that the deceased was assaulted by four persons named by Mahesh Suryawanshi. Column No.17 shows that there are four injuries on the person of deceased. The post-mortem report would show that there are chop wounds on right temporo-parietal occipital area and on the scalp there are contused lacerated woulds and multiple contused abrasions. The cause of death is head injury. Upon considering the papers of investigation, more particularly the statement of Mahesh Suryawanshi and the other family members of the deceased, it appears that the incident has been blown out of proportion by the complainant and Rohan Panchal.”

9 Similarly, the learned trial Court while admitting accused Shaukat Attar on bail observed at paragraph 5 that CDR of the informant shows that he was not in Bharatmata Nagar in between 11 to 11.30 p.m. on the date of the incident. It is relevant to note here that the incident had taken place in Bharatmata Nagar area at about 11.00 p.m.

10 From the above what emerges is that there is no consistency between the statements of prosecution witnesses. Even the presence of informant and his friend Rohan Panchal is doubtful. Taking into consideration the material on record and the aforesaid lacunae as noted, I am of the opinion that applicant deserves to be enlarged on bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Atul Amrut Mohite shall be released on bail in Crime No.121 of 2016 registered with Police Station Dighi, Pune, on his executing P.R.Bond in the sum of Rs.50,000/- with one or two sureties in like amount.

- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) The applicant shall not enter into the jurisdiction of Bharatmata Nagar, Dighi, Pune, till conclusion of the trial.
- (iv) Bail before the trial Court.
- (v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (vi) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.
- (vii) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)