

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3030 OF 2019

Akash @ Balal Raju Kharat, Age 20 years, R/o.C-04, Chitrakut Society, Peth Naka, Panchwati Nashik-422 003 (Presently lodged at Nasik Road Central Prison)	Applicant
versus	
The State of Maharashtra	Respondent

Mr.Manas N. Gawankar for applicant.
Mr.YY.Dabake, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 12th July 2021

PC :

1. The applicant is arrested on 14th September 2018 in connection with CR No.392 of 2018 registered with Panchavati Police Station, Nashik for offence under Section 302 r/w Section 34 of Indian Penal Code and u/s.135 of Bombay Police Act. The FIR was registered on 12th September 2018.

2. The complaint was lodged by Sandeep Lokhande alleging that on 11th September 2018 the complainant received a call from Nilesh Kardak at about 8.30 pm. He was informed that quarrel was going on between Taklya, Dhatrak and one more person. They have assaulted Taklya @ Pravin. The complainant and his friend Manoj Khalse went to the place of incident. They found the victim in injured condition. Nilesh Kardak told them that Sonu Dhatrak and another person having dark complexion had assaulted Taklya @ Pravin with sharp weapon. The FIR was registered against Sonu

Dhatrak and one unknown person. Investigation proceeded. Victim was the brother of first informant. Supplementary statement of complainant was recorded on 12th September 2018. In the supplementary statement he attired his version referring to four persons as assailants in crime. During the course of investigation statements of various other witnesses were recorded. Applicant was arrested. On completing investigation charge sheet was filed.

3. The applicant preferred application for bail before Sessions Court. The said application was rejected vide order dated 29th March 2019.

4. Learned advocate for applicant submitted that applicant has been falsely implicated in this case. The complainant has improved his version in the supplementary statement. The statements of witnesses indicate that there was darkness at the scene of offence and hence there was no opportunity to the witnesses to see the assailants. The applicant has not been named in the FIR. The statements of witnesses are contradictory to each other. The version of witnesses create doubt about time when the offence had occurred. The applicant is in custody since three years.

5. Learned APP submitted that although applicant has not been named in the FIR, there are statements of eye witnesses who have implicated applicant in the offence. Role has been ascribed to the applicant. The victim had received several injuries. The applicant was armed with weapon. Minor contradictions need not be taken into consideration at this stage. The offence is of serious nature.

6. The first informant is the brother of deceased. According to him information was given to him by Nilesh Kardak. He was informed that Sonu Dhatrak and another person accompanying him having dark complexion, had assaulted his brother Pravin @ Taklya and that he is lying in injured condition. The complainant then proceeded to the place of incident and found that his brother was lying in injured condition. He had sustained injuries on his person. He has also stated that he could see his brother in injured condition with flashlight of his mobile. The supplementary statement of complainant was recorded on the next day i.e. 12th September 2018. In the said statement he has stated that on the date of FIR he had stated that his brother is assaulted by Sonu Dhatrak and another person. In fact, Nilesh Kardak had informed that Sonu Dhatrak, Nitin Khalse and one more person accompanying them having dark complexion, had assaulted Pravin @ Taklya. The fact that Nitin Khalse and one more person was involved in the crime was not stated by him to Police. He was in disturbed state of mind. The statement of Aatish Tayde was recorded on 12th September 2018. He has stated that on 11th September 2018 he saw Sonu Dhatrak and Aakash @ Balu Kharat (applicant) together. They approached him and abused him. Sonu Dhatrak warned him not to be in company of Taklya. Aakash Kharat showed him sickle and threatened him. Both of them left on motorcycle. After some time wife of his friend Pravin @ Taklya met him and told him that Pravin wants to talk to him on her cell phone. Pravin enquired with him as to who had approached him and abused him. At that time he heard someone shouting that some person should be assaulted. Statement of Nilesh Kardak was recorded on 12th September 2018. He stated that Sonu, Nilesh and one more person had quarrel. Sonu Dhatrak assaulted. Nitin also

assaulted Pravin Lokhande. The person having dark complexion caught hold of Pravin. The fourth person was instigating them to assault Pravin. At that time Pravin managed to run away from the clutches of assailants. He ran away from the place of incident. He was chased by assailants. It is pertinent to note that Nilesh Kardak has made reference of four assailants having participated in the crime. He is the witness who gave information to complainant. While giving information he referred to two persons as assailants. The applicant has not been named in the FIR as well as in the statement of Nilesh. Thus, applicant was unknown to Nilesh. However, investigating agency has not conducted test identification parade qua Nilesh Kardak to identify applicant. Nilesh has not stated that unknown person has assaulted the victim. It is also pertinent to note that in the statement he has stated that unknown person having dark complexion, was present at the scene of offence and he could not see his face as it was dark. During the course of investigation statement of other witnesses were recorded. On 13th September 2018 statement of Rohan Aahire was recorded. He is allegedly the eye witness to the incident. According to him on 11th September 2018 he saw Sonu, Aakash (applicant), Vicky Wagh and Nitin together. They were joined by Mangesh Dhasal. The witness left their company and again joined them at about 8.00 to 8.30 pm. At about 8.30 pm Sonu assaulted victim with iron sickle. Nitin assaulted by sickle and Aakash Kharat caught hold of the victim. The injured managed to run away from the place of incident. He was chased by accused Sonu and Nitin. They assaulted the victim with sickle. Vicky and Aakash (applicant) also followed them. Nitin assaulted with sickle on the legs of victim and applicant has allegedly taken sickle from hands of Nitin and assaulted on the head of victim.

At that time Vicky shouted and instigated others. Sonu Dhatrak assaulted with sickle. Statement of Rohan Aahire was recorded on the next day of incident. Statement of Mangesh Dhasal was recorded on 13th September 2018. He has stated that Sonu had assaulted the injured with sickle. Nitin had assaulted with sickle. The applicant caught hold of the victim. The statement is similar to the statement of Rohan. He has not referred to presence of Nilesh or Rohan. His version is contradictory to the version of Nilesh. Thereafter statement of Gaurav Motiyani was recorded on 13th August 2019. He has stated that at about 7.00 pm he had visited the wine shop for purchase of liquor. He met Aakash Kharat and Vicky Wagh. He was made to alight from the motorcycle by Vicky Wagh. At that time both of them had disclosed that they have assaulted Taklya. The tenor of his statement would indicate that disclosure was made to him about assault by the accused at about 7.00 pm or immediately thereafter. The statement of eye witnesses would indicate that incident had occurred at about 8.30 pm.. The statements of two eye witnesses was recorded on the next day. The applicant is in custody for a period of about three years.

7. Considering the circumstances, bail can be granted to the applicant. Hence, I pass following order :

ORDER

- (i) Bail Application is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No. 392 of 2018 registered with Panchavati Police Station, Nashik, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall stay out of jurisdiction of Panchavati Police Station till conclusion of trial;
- (iv) The applicant shall not tamper with evidence;
- (v) The applicant is permitted to furnish provisional cash bail in the sum of Rs.25,000/- for eight weeks in lieu of sureties;
- (vi) The applicant shall attend Trial Court on the dates of hearing regularly, unless exempted by the Trial Court;
- (vii) The applicant shall furnish details of place of his residence to the Investigating Officer where he would reside after he being released on bail.

(PRAKASH D. NAIK, J.)

MST