

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL APPLICATION NO.3175 OF 2021

IN

CRIMINAL APPEAL NO. 664 OF 2021

**SAMPAT @ PRASHANT SHANTARAM GAGRE
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. A.N. Nagargoje, Advocate for the applicant.
Smt. P.V. Diggikar, A.P.P. for the respondent - State.

...

WITH

901 CRIMINAL APPLICATION NO.350 OF 2022

IN

CRIMINAL APPEAL NO. 77 OF 2022

**VISHAL @ CHOTU HAUSHIRAM KHEMNAR
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. V.R. Dhorde, Advocate for the applicant.
Smt. P.V. Diggikar, A.P.P. for the respondent - State.

...

**CORAM : V.M. DESHPANDE AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 20-04-2022.

P.C. :

1. These two applications for suspension of substantive jail sentence and for grant of bail are heard

simultaneously and they are disposed of by this common order, since these applications and appeals arise out of the judgment and order of conviction passed by the learned Additional Sessions Judge, Sangamner dated 29.11.2021 in Sessions Case No. 32/2017. By the impugned judgment, both the applicants stand convicted for the offences punishable under Sections 302, 324, 323 read with Section 34 of the Indian Penal Code.

2. Heard Shri. Ankush Nagargoje, learned Counsel for applicant Sampat in Criminal Application No.3175 of 2021 and Mr. V.R. Dhorde, learned Counsel for applicant Vishal in Criminal Application No. 350 of 2022. Also heard Smt. P.V. Diggikar, learned Addl. Public Prosecutor for the State who strenuously urged before the Court that the applications filed on behalf of the present applicants need to be rejected in view of the availability of direct evidence.

3. We have given our thoughtful consideration to the rival submissions of the counsel for the respective parties and also perused relevant documents and evidence which is essential for consideration of these bail applications.

4. The deceased in this case is one Swapnil Puneekar. The incident in question has occurred on 08.03.2017 at 7.00

p.m. and place of the occurrence is front portion of the house of one of the accused Govind. It is submission of learned Addl. Public Prosecutor that there are five eye witnesses; they are PW-1 Tanaji, PW-10 Shivaji, PW-11 Avinash, PW-12 Bhausahab and PW-13 Vinayak. In this behalf it is submitted by the learned Counsel for the applicants that these witnesses are close relatives of the deceased, and therefore, their evidence needs to be discarded. We are afraid, at least prima facie, to accept the submission of the learned Counsel for the applicants inasmuch as it is settled principle that merely because the witnesses are close relatives of the deceased, that does not earn disqualification from consideration of their evidence and their version and evidence need not to be viewed with the tainted glass. However, the stage of appreciation of their evidence in detail will be at the time of final hearing. Presently we have to consider the totality of the circumstances whether to consider the applications favourably or they require rejection.

5. The First Information Report is lodged by PW-1 Tanaji. The oral report is at Exh.63. It is dated 06.03.2017. From the First Information Report and also from the relevant evidence, it is clear that the incident in question is a sequence to the earlier dispute that was occurred in a S.T.

bus. From the First Information Report it is clear that co-accused Govind gave a stab blow to Swapnil. In so far as the present applicants are concerned, their names are not recorded in the First Information Report. On the contrary, it is stated in the First Information Report that two unknown persons were accompanying Govind. On the pointed query to the learned A.P.P. as to whether the Test Identification Parade is held or not, the learned A.P.P. submitted that the Test Identification Parade is not held. Merely because Test Identification Parade is not held, that is not a reason to discard the entire prosecution case inasmuch as when the Test Identification Parade is not substantive piece of evidence. It is only to lend assurance to the Investigating Officer as to whether the investigation is in proper direction or not. The substantive piece of evidence is the identification by the witness from the witness dock.

6. Be that as it may, even in the First Information Report the role attributed to the present applicants is not that they have used any weapon.

7. According to the learned A.P.P., PW-11 Avinash has produced pistol which was in the hand of applicant Sampat and which fell down in the melee. Exh. 77 is the seizure

panchnama. It is dated 09.03.2017 and in Exh. 77 there is no mention of pistol but what is mentioned is 'air gun'. There is vast difference between air gun and pistol. Further, prima facie, we are unable to locate any explanation given by PW-11 Avinash as to why he did not produce the said weapon immediately to the police at the time of registration of offence. Therefore, at this stage, we are not impressed by the arguments advanced by the learned APP that the pistol or any weapon like that was in the hand of Sampat.

8. In this case the postmortem is conducted by PW-17 Dr. Bhaskar Bhawar on 9th March 2017. On examination of dead body, he found the following external injury :

“Slit shaped stab injury noted over right lower chest wall just lateral to mid clavicular line in 10th intercostal space of length 5 x 1.1/2 cm., penetrating into underlying”

Except the above external injury no other external injury was found. Even clause 19 of the postmortem report (Exh.104) corresponds to the said injury. Thus, it is crystal clear that this is a case of one stab injury and the role attributed to that stab is to co-accused Govind whose bail application is withdrawn today itself. So far as the other accused persons

are concerned, they are convicted with the aid of Section 34 of the Indian Penal Code. It will be a question of appreciation as to whether at the time of giving stab blow by Govind, whether they were sharing common intention or not, that can be decided only at the time of final hearing. Presently since there is no role attributed to them that they actually assaulted the deceased, we pass the following order.

ORDER

- (i) Criminal Application No. 3175 of 202021 in Criminal Appeal No. 664 of 2021 and Criminal Application No. 350 of 2022 in Criminal Appeal No. 77 of 2022 are hereby allowed.
- (ii) The judgment and order of conviction passed by the learned Additional Sessions Judge, Sangamner in Sessions Case No. 32/2017 convicting the applicants Sampat @ Prashant Shantaram Gagre and Vishal @ Chotu Haushiram Khemnagar shall remain suspended during the pendency of the appeals.
- (iii) The applicants Sampat @ Prashant Shantaram Gagre and Vishal @ Chotu Haushiram Khemnagar be released on bail on their executing P.R. bond of Rs. 10,000/- (Rupees Ten Thousand) each, with one solvent surely in the like amount.
- (iv) Both the applicants are directed to attend the Police Station, Sangamner and mark their presence once in six months during the pendency of these appeals.

- (v) Both the applicants shall personally remain present in this Court at the time of final hearing of the appeals.
- (v) With these observations, both the criminal applications are disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.M. DESHPANDE, J.)