

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**901 CRIMINAL APPLICATION NO.669 OF 2022
IN APEAL/144/2022**

SHUBHAM SHYAM KAMBLE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant: Mr. Salunke Mayur V a/w.
Mr. Kakade Amarsinha Shankar
APP for Respondent: Mr. S. D. Ghayal

...
AND

...

**901 CRIMINAL APPLICATION NO.1079 OF 2022
IN APEAL/231/2022**

ROHIT RAMESH KAMBLE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant: Mr. G. G. Kadam
APP for Respondent: Mr. S. D. Ghayal

...

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

DATE: 22nd APRIL, 2022

PER COURT:

1. These two applications are for suspension of substantive jail sentence and for grant of bail. These two applications are taken up for hearing simultaneously and they are disposed of by common order since the applicants in these 2

applications were convicted by learned Additional Sessions Judge, Ahmednagar in Sessions Case No.113 of 2017 on 13.12.2021 for the offence punishable U/Sec.302 read with Section 34 of the IPC.

2. Criminal Appeal No.144 of 2022 was admitted by this Court (Coram V. K. Jadhav and Sandipkumar C. More, JJ.) on 07.03.2022 and criminal application no. 669 of 2022 was ordered to be considered after receipt of record and proceedings and record and proceedings were also called.

3. In pursuance to the order dated 07.03.2022 record and proceedings were summoned and they are received and they are placed before the Court for consideration.

4. In the meanwhile, accused Rohit also preferred Criminal Appeal No.231 of 2022 which was listed today and is admitted and in that he filed an application no.1079 of 2022 for suspension of substantive sentence and grant of bail. Since

record and proceedings is already summoned this application can also be disposed of today itself.

5. The applicant Rohit alongwith co-accused Mala were charged in the Sessions Case No.113 of 2017 for the offence punishable U/Sec.302 read with Section 34 of the IPC and Section 4 and 25 of the Arms Act. By the impugned judgment dated 13.12.2021 the learned Judge of the Court below acquitted accused no.1 Mala Ramesh Kamble from all the offences. Similarly, the learned Judge acquitted the present applicant Rohit for the offence punishable U/Sec.4 read with Section 25 of the Arms Act.

6. We have heard Mr. Mayur Salunke alongwith Mr. A. S. Kakade, learned Counsel in Criminal Application No.669 of 2022 and Mr.G. G. Kadam, learned Counsel in Criminal Application No.1079 of 2022. Both the applications were vehemently opposed by Mr. S. D. Ghayal, learned APP. The respective learned Counsels advanced their arguments in support of their case and claimed for

respective reliefs in their favour. With the assistance of the learned Counsel appearing for the parties we have gone through the relevant portion of the record and proceedings and the evidence which is necessary for deciding the present applications.

7. The learned APP submitted that in this case there are 2 eye witnesses, they are PW-3 Sagar and PW-4 Kailash. According to the learned APP these two eye witnesses attribute the specific overt acts on behalf of both the applicants. He submitted that their version is having found corroborated with the two pieces evidence in the nature of postmortem report Exhibit-89 which was proved by PW-5 Dr.MG. He also submitted that there was recovery of weapon of knife at the behest of applicant Rohit. He therefore submitted that the application needs to be rejected. The common thread of the submission by the learned Counsel for the applicants is that both the eye-witnesses are the brother and uncle of the deceased and

therefore they are interested witnesses. It is also the submission of the learned Counsel for the applicants that in the first information report the description of the weapon is given as knife whereas PW-3 states from his substantive evidence that the weapon which was used was sword stick, they, therefore, submitted that this itself sufficient to discard their evidence. We are afraid that these two submissions has any force in law.

8. The law is well settled that merely because the witnesses are the closely related witnesses their evidence, that by itself attract any disqualification. It is necessary for the Court to scrutinise their evidence with caution. At this stage, we are not impressed by these submission of the learned Counsels about the description of the weapon. In as much as there is no dispute that deceased Shekhar lost his life due to the stab injury. The submission made before this Court on behalf of the learned Counsel for

the applicant Rohit is that it could be a self inflicted injury. We are not ready to accept this submission also because when the autopsy surgeon Dr.Manoj Ghuge was in witness box, the opportunity was available to the learned crossexaminer to put the defence on behalf of Rohit that the injury is caused is a self inflicted injury was not proved.

9. Presently, the question before this Court is whether the applicants are entitled to be released on bail pending the appeals.

10. The first information report is lodged by PW-3 Sagar. First Information Report is at Exhibit-59. It is dated 01.03.2017. The recitals of the First Information Report clearly spelt out that there was no previous animosity in between any of the accused and deceased. It appears that applicant Shubham was interested for purchase one vehicle and for that amount was given. The motorcycle was also given to Shubham. The applicant in the application No.669 of 2022

however, it was not of his choice and therefore, it appears that there was some grudge in his mind. As per the first information report dated 01.03.2017 when the deceased and first informant Sagar were present in their house at that time deceased Shekhar was called by accused Shubham and started beating deceased Shekhar. Accused Mala caught hold of Shekhar while accused Rohit stabbed knife in the chest and back of deceased Shekhar. Shubham picked up one cement block and hit it on the head of Shekhar.

11. The Exhibit-89 the postmortem report as well as the evidence of Dr.Manoj Ghuge specifically points out that there was no fracture of skull of the deceased. The autopsy surgeon deposed that there was contused lacerated wound over parieto occipital region, contused lacerated wound over occipital region and stab injury over lumber back portion.

12. In this context it would be useful to refer evidence of PW-4 Kailsh uncle of the

deceased. It would be relevant to reproduce his version appearing in his Chief Examination,

“2. On 01.03.2017, I returned to home from my job around 5.40 to 6.00 p.m. At that time, quarrel was going on between deceased Shekhar and accused Shubham Kamble. At that time, accused Rohit and Mala were also present there. The quarrel was going on over the motorcycle. There was fighting and abusing. At that time, Subhash Kamble was having sword stick in his hand. Due to the jerk, the sword stick in the hand of Shubham fell down on the ground. Rohit picked up that sword stick and inflicted blow on the chest of Shekhar Gaikwad. Due to which, Shekhar fell down on earth. When accused Rohit inflicted blow of sword stick on the chest Shekhar by that time, accused Mala Kamble caught hold the hand of Shekhar towards back. When Shekhar fell down on earth, by that time, accused Rohit pierced sword stick in the back of Shekhar Gaikwad. Accused Shubham Kamble picked up the cement block and hit on the head of Shekhar Gaikwad. In that scuffle, the accused Rohit also sustained injury. In the meanwhile, Sagar Gaikwad, the brother of deceased Shekhar and Nilesh Sonawane came there. They took the injured Shekhar Gaikwad to Civil hospital, Ahmednagar. In hospital, Shekhar died. Police recorded my statement in respect of the incident.”

13. From the aforesaid evidence it is crystal clear that when deceased Shekhar was actually assaulted they were abusing with each other and

the quarrel in between the applicants and the deceased. It appears from the evidence of Kailash that though the applicant Shubham was having knife in his possession however he did not use the said weapon. That shows that at the relevant time Shubham was not having any intention to kill the deceased. At the same time it is very clear that accused Rohit was not armed with any dangerous weapon at the time when the quarrel started. From evidence of Kailash it is crystal clear that in the free fighting the weapon fell down on the ground and thereafter it was taken up by Rohit and he gave stab blow and that till the time when he took up the weapon there was no intention on his part to kill the deceased.

14. It appears from the evidence of both the eye witnesses it is clear that there was dispute so going on, within a spur of moment the incident occurred. It is clear that the accused person are not having any past criminal record.

15. In the totality of the aforesaid discussion prima faice we are of the view that ultimately the offence may be scaled down from the offence punishable U/Sec.302 to any lessor punishment.

16. It is reported to the Court that presently this Court is taking criminal appeals of 2015. Thus the final hearing of this appeal will take its own time.

17. In that view of the matter and looking to the quality of the offence and as observed by this Court that the possibility of the scaling down of offence in our view and since there is no criminal antecedents to the credit of the applicants, in our view no fruitful purpose would be served by keeping them behind the bars during the pendency of the appeal. Considering that we pass the following order.

18. Criminal Application No.669 of 2022 in Criminal Appeal No.144 of 2022 and Criminal

Application No.1079 of 2022 in Criminal Appeal No.231 of 2022 are hereby allowed.

19. The judgment and order of conviction passed by the learned Addtional Session Judge, Ahmednagar dated 13.12.2021 in Sessions Case No. 113 of 2017 shall stand remained suspended during the pendency of the present appeals.

20. Applicant Shubham s/o. Shyam Kamble in Criminal Application No.669 of 2022 and Mr. Rohit s/o. Ramesh Kamble in Criminal Application No.1079 of 2022 be released on bail on their executing P.R.Bond of Rs.5,000/- each and that with one surety of the like amount.

21. Both the applicants are directed to attend police staion Bhingar Camp of Ahmednagar ones in 6 months to mark their presence during the pendency of the appeals.

22. The learned Judge who will be issuing release warrant shall ensure that entire fine amount is deposited by both the applicants.

23. With these observations, both the applications are allowed and disposed of.

[SANDIPKUMAR C. MORE, J.]

[V. M. DESHPANDE, J.]

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