

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

CRIMINAL BAIL APPLICATION NO. 2712 OF 2021

Arjun Rajendra Dere	...	Applicant
Versus		
The State of Maharashtra	...	Respondent

Mr. Shailesh Chavan a/w Shrikant Panhale, for the Applicant.
Smt. P. P. Shinde, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 10th December, 2021.

PRONOUNCED ON : 20th January, 2022.

PC:-

. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in C.R. No. 224 of 2017 registered with Koregaon Police Station, District-Satara for the offences punishable under Sections 302, 326, 109, 216, 120B, 34 of the Indian Penal Code.

2 It is the case of prosecution that on 21/08/2017 one Karan Barnekar had abused and assaulted the relatives of the informant, namely, Shubham More. Therefore, the informant along with his

friend Shambhu Barge (deceased), Akshay Jagdish Barge, Akshay Sanjay Barge and others questioned Karan Barnekar about the incident. The prosecution alleges that at that time applicant assaulted Akshay Jagdish Barge on his right leg by iron rod and also tried to assault the deceased. Akshay Jagdish Barge had suffered a fracture on his leg.

3 According to prosecution, on the same day at about 9-30 p.m. deceased visited Akshay Barge in the hospital and then left. At about 10-27 p.m. the deceased called the informant on his mobile and informed that he has been assaulted and urged him to reach near Shivratna Hotel. Informant and others accordingly rushed and found the deceased having sustained a stab injury and was lying in a pool of blood. While they were shifting to the hospital, the deceased informed them that he was assaulted at the instance of Jaywant Pawar. Accordingly, the informant lodged the report. However, it appears that during the course of treatment the deceased succumbed to the injuries.

4 Mr. Chavan, learned Counsel for the applicant, submits that

there is only recovery of knife at the instance of applicant. Learned Counsel also invited my attention to the alleged eye witnesses, namely, Pravin Chandrakant Mane and Vishal Laxman Kajale and assailed their statements by assigning reasons that their statements came to be recorded after more than 23 days and therefore, their statements need to be questioned. Learned Counsel also drew my attention to the statement of Amit Manoj Deshmukh. According to him, one Ganesh Shingte had told him about the quarrel and that they had assaulted the deceased. Investigation is completed. Charge-sheet has been filed. In such circumstances, no purpose will be served by keeping the applicant behind the bars, argued learned Counsel.

5 Ms. Shinde, learned APP, on the other hand, invited my attention to letter written by concerned Medical Officer to the Police Inspector, Koregaon Police Station, informing about the injuries sustained on the right leg by Akshay Barge. There is recovery of knife at the instance of applicant. Learned APP also placed reliance on the statements of Pravin Chandrakant Mane and Vishal Laxman Kajale which are also relied on by learned

Counsel for the applicant. According to learned APP, having regard to the nature of offence, applicant does not deserve to be enlarged on bail.

6 Perused the investigation papers.

7 If the FIR is read carefully it would be seen that there were in all three incidents. In the second incident, the present applicant had assaulted Akshay Barge on right leg by iron rod, however, the third incident appears to be main incident. In the said incident, the deceased was done to death.

8 The FIR, however, shows that when the deceased was being taken to the hospital by the informant and others, he told them that he was attacked by some persons at the instance of Jaywant Pawar. The name of present applicant or any other assailant was not revealed by the deceased.

9 This takes me to the statements of eye witnesses. They are Pravin Chandrakant Mane and Vishal Laxman Kajale. Not only learned Counsel for applicant but learned APP has also pressed

these statements into service.

10 The statement of Pravin Chandrakant Mane shows that on 21/08/2017 he saw the applicant and Aditya @ Babu Shinde beating the deceased in front of Shivratna Hotel. At that time the applicant was armed with knife while Aditya @ Babu Shinde with *sura*. One Ganesh Shingte was standing near a motorcycle. Similar is the statement of Vishal Laxman Kajale. Both the said statements were recorded on 14/09/2017 whereas the incident in question had taken place on 21/08/2017 i.e. to say that these statements were recorded after more than 23 days for which no explanation is forthcoming.

11 It is also pertinent to note that the statements of said witnesses were again came to be recorded under Section 164 of the Criminal Procedure Code by learned Judicial Magistrate First Class, Koregaon on 16/01/2018 and they repeated the same statement as given by them earlier. Despite having seen the incident on 21/08/2017 both the above said witnesses did not bother either to inform the informant or to the concerned police station. Such a huge delay definitely puts a question mark on their conduct.

12 Apart from above, these witnesses nowhere state that they had seen applicant and other accused assaulting deceased by means of weapons with which they were armed. All that they state is that they saw deceased being beaten at the hands of said accused.

13 The only incriminating circumstance against the applicant is recovery of knife at his instance but interestingly the knife was not having any blood stains and rather from the investigation papers it reveals that the knife was found embedded in the chest of the deceased and removed in the hospital only by the concerned doctor.

14 So far as extra-judicial confession given before the prosecution witness, namely, Amit Deshmukh by Ganesh Shingte is concerned, that is also quite vague. A general statement is made. Moreover, it is settled law that the extra-judicial confession is a weak piece of evidence. The same will have to be taken into consideration by the trial Court at the time of appreciation of evidence.

15 Having regard to the material on record, I am satisfied that no evidence is forthcoming to show prima-facie involvement of the applicant in the death of the deceased or that applicant had authored the death.

16 It also to be kept in mind is that the investigation is over. Charge-sheet has been filed. The applicant is in custody since 24/08/2017. In such circumstances, the applicant has made out a case for bail. Hence, the following order.

ORDER

(i) Applicant- Arjun Rajendra Dere shall be released on bail in C.R. No.224 of 2017 registered with Koregaon Police Station, District- Satara on his executing P. R. bond in the sum of Rs. 25,000/- with one or more sureties in like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while

deciding the case on merits.

(iv) Bail before the trial Court.

(v) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)