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

BAIL APPLICATION NO. 685 OF 2021

Chetan Sunil Shekate ...Applicant

Versus

The State of Maharashtra ...Respondent

.....
Mr. Meghdeep M. Oak for the Applicant.
Mrs. P.P.Shinde, APP for the Respondent -State.

.....
CORAM : V.G.BISHT, J.
RESERVED ON : 14TH DECEMBER, 2021
PRONOUNCED ON : 20TH JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 62 of 2017 registered with Kharghar Police Station, Navi Mumbai for the offence punishable under Sections 452, 302, 324 read with 34 of the Indian Penal Code (the IPC).

2. Deceased Rajesh Atmaram Durandare was the foster brother of informant. On 12 February, 2017, deceased went to

informant and told that since he had insulted the mother-in-law of accused Jamal Shaikh, he would tender apology in the morning. At about 1.00 am on 13th February, 2017, accused Jamal Shaikh knocked the door of informant and asked her to send deceased as he wanted to take him to the police station. When informant opened the door, she found brother-in-law of accused Jamal Shaikh, namely, Laxman Kuchekar and their neighbours, namely, Sunil Shekate and his son Chetan Shekate (applicant). They all entered into the house and dragged deceased outside the house.

3. Prosecution alleges that accused Sunil Shekate and his son Chetan Shekate (applicant) then started beating deceased by means of wooden logs while accused Jamal Shaikh, Laxman Kuchekar and Chetan Shekate had caught hold of the deceased. Prosecution further alleges that accused Sunil Shekate then gave a blow of a knife on the chest of deceased. When informant and her three sons tried to intervene, accused Sunil Shekate again gave a blow of a knife which landed on the hands of informant. Thereafter, she and her

sons were beaten by wooden log by accused Sunil Shekate. Later on, all the accused fled away by throwing wooden log and knife on the spot. Deceased was immediately removed to the hospital where he was declared dead. Informant accordingly lodged the First Information Report (FIR).

4. Mr. Oak, learned Counsel for the applicant, submits that there is inconsistency between the contents of FIR and the statement of sole eye witness, namely, Santosh Atmaram Durandare. As far as the role of present applicant is concerned, learned Counsel invited my attention to the findings of postmortem report and would submit that the cause of death is due to hemorrhagic shock and hemothorax following penetrating injury to right side of chest (stab wound) causing injury to vital organ and the said injury admittedly was not caused by applicant. According to learned Counsel, applicant is behind the bars since last five years. The trial is yet to commence. In such circumstances, the applicant deserves to be enlarged on bail.

5. Mrs.Shinde, learned APP, on the other hand, opposes the submissions by submitting that it was the applicant, who had given a knife to accused Sunil Shekate, who in turn assaulted deceased, leading to death of the latter. Charge has already been framed. Having regard to the seriousness of offence, the applicant does not deserve to be enlarged on bail and rather, directions may be given to the trial Court to expedite the hearing of the matter.

6. Perused investigation papers. From FIR, it is more than clear that it was accused Sunil Shekate, who had given a blow of a knife on the chest of deceased. It is not the case, as argued by learned APP, that it was the present applicant, who had given a knife to accused Sunil Shekate and it is only then that accused Sunil Shekate inflicted a blow of a knife on the chest of deceased.

7. There is statement of Sohail Shahabuddin Shaikh, who states that it was the applicant who had given a knife to accused Sunil Shekate and had even asked to assault deceased

by means of said weapon. Accordingly, accused Sunil Shekate had inflicted a blow of a knife on the chest of deceased. This statement is in direct conflict with the contents of FIR.

8. I have already pointed out that it is nobody's case in the FIR that the applicant was instrumental in not only giving a knife to accused Sunil Shekate but also had exhorted latter to give a blow of the same on the person of deceased. On the contrary, accusation against the applicant is that he had assaulted deceased by means of a wooden log.

9. I have also gone through the contents of postmortem report. Column no. 17 shows that there were incised wounds and one stab wound. Admittedly, these injuries were caused by means of a sharp weapon, which allegedly was used by accused Sunil Shekate and not the applicant. Even, the cause of death shown is hemorrhagic shock and hemothorax following penetrating injury to right side of chest (stab wound) causing injury to vital organ.

10. Having regard to the material on record and the fact that the applicant is in jail since last five years, in my considered view, the applicant has made out a case for bail. Hence, the following order :

ORDER

(i) Applicant- Chetan Sunil Shekate shall be released on bail in C.R. No. 62 of 2017 registered with Kharghar Police Station, Navi Mumbai on his executing P.R. Bond in the sum of Rs. 25,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the trial Court proceedings regularly.

(iv) Bail before the trial Court.

(v) 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.

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

(V.G.BISHT, J.)