

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

***INTERIM APPLICATION NO.337 OF 2022
IN
CRIMINAL APPEAL NO. 76 OF 2022***

Subhash Pandurang Kad ...Applicant
Vs
The State of Maharashtra ...Respondents
...

Mr. Niteen Gaware-Patil i/by Mr. Ganesh Bhujbal for the Applicant.

Mr. H.J.Dedhia, APP for the State/Respondent.

CORAM : SANDEEP K. SHINDE J.
DATE : MARCH 9, 2022.

P.C. :

The incident of knife attack, by the applicant on the person of Shankar Darekar, (Injured) and Tukaram Darekar, was reported to the police on 12th May, 2012 at around 22.45 hours. Whereupon the crime came to be registered against the four persons under Section 307 of the Indian Penal Code, 1860. Injured Shankar and Tukaram, were taken to Surya Hospital. Both were examined by Dr. Ravindra Tamgire (P.W.6). Noting grievous injuries on the person of Shankar and for want of ICU facility, Shankar was shifted to

Nobel Hospital. However, Tukaram, was treated in Surya Hospital, who had sustained, stab injury on the left side of back just below left scapula. The evidence of Dr. Pradip Sharma, P.W.2 reveals that injured, Shankar Darekar was accompanied by his cousin Manish Darekar while admitting him in the Nobel Hospital. History sheet (Medico legal) maintained at Noble Hospital divulges, that Shankar was assaulted by sharp object on abdomen; but does not show away, who the assailants were. As well, consent of Manish Darekar that was taken before performing surgery on Shankar, does not refer to incident of assault nor reveals names of the assailants. In any case, the evidence of Investigating Officer, P.W.7, reveals the fact that soon after the incident, applicant (Subhash) had lodged the complaint at about 23.35 hours, alleging assault mounted on him by Tukaram, Sagar and Shankar Darekar by iron rods and wooden sticks. Whereafter, Subhash was referred to Government Hospital for medical examination. Medical officer found three injuries on the person of Subhash, which he noted in Exhibit 99. As against the evidence of the Investigating Officer, Sagar (Complainant/P.W.1) and Shankar (P.W.3) testified that Subhash (Applicant) mounted knife assault on

Shankar, reason being, Shankar enquired about his married sister, with whom the applicant allegedly eloped in the year 2007. Therefore, the incident testified by Sagar (complainant) was dissimilar to that of the Investigating Officer. This irregularity in the prosecution case, as pointed out by Counsel for the applicant has not been addressed by the learned trial Court. In any case, Mr. Dedhia, learned Prosecutor submitted that, Shankar suffered grievous injury on vital part of his body and had undergone a surgery. Mr. Dedhia submitted, fact that Shankar had suffered grievous injury in knife attack mounted by the applicant, has been proved by the prosecution beyond reasonable doubt through the evidence of Sagar and Medical Officer. Be that as it may, Mr. Dedhia, has rightly submitted that, Shankar had suffered grievous injury but the question that remain unanswered is, whether Shekhar had suffered injury in alleged scuffle with the applicant or in the alleged assault by the applicant. In the sense the applicant had also suffered three injuries and in a complaint lodged by him, he reported that, he was assaulted by Shankar, Sagar and Tukaram Darekar. Thus, the allegations made by the applicant were not investigated into by the Officer and equally

the learned trial Judge has not addressed the same while convicting the applicant. Additionally, knife allegedly used by the applicant was not seized by the Investigating Officer. That apart, the blood stained clothes were also not seized. The learned Counsel, has correctly pointed out that, although Shankar had suffered grievous injury, his statement was not recorded by the prosecution. Additionally, Tukaram-injured, was also not examined as prosecution witness. In any case, the motive alleged as it appears, had no close proximity to the alleged incident, in as much as, it is prosecution's case that, married sister of Shankar eloped with the applicant in the year 2007 and on that count, there were differences between the applicant and Shankar. Yet, taking into consideration, the facts of the case and the evidence on record, in my view, a case is made out for granting bail to the applicant. Hence, following order;

ORDER

(i) Subhash Pandurang Kad, applicant in Crime No.104 of 2012 registered with Shikrapur Police Station, is directed to be released on PR bond in the sum of Rs.50,000/- with one or more sureties in like sum.

(ii) Applicant shall report to the concerned police station once in a month, i.e. on every second Monday between 11 a.m. to 1 noon.

2 Interim Application is disposed of.

(SANDEEP K. SHINDE, J.)

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