

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

CRIMINAL APPEAL NO. 684 OF 2022

Ravindra @ Ravi Ramavatar Singh Kushwah
Age : 41 years, Occu: Business,
R/o.: Nishant Apt. Bldg, 3rd Floor,
Room No.309, Dr. Vadhyawadi Subhash Chowk
Murbad Road, Kalyan,
District Thane
(*At present in Taloja Central Prison*)

... Appellant

Versus

1. The State of Maharashtra
Through Mahatma Phule Chowk
Police Station

2. Santosh Dattu Jadhav,
Age : 33 years, Occu: Business,
R/o.: Govind Nagar, Deren Builder Chawl,
Pisholi, Kalyan (W)

... Respondents

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Mr.Deepak N. Salvi a/w. Mr.Sahil Salvi and Mr.Sagar Pedkar, Advocate for the Appellant.

Mrs.P.P. Shinde, APP for the Respondent No.1–State.

Mr.Pawan Mali, Advocate (Appointed) for Respondent No.2.

...

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : AUGUST 04, 2022

ORDER : (Per : Sharmila U. Deshmukh, J) :

1. By this appeal, the appellant seeks the following reliefs:

(a) Pending the trial of this case, this Hon'ble Court be pleased to order the release of the applicant on bail in C.R. No.I-86 of 2016 registered with Mahatma Phule Chowk Police Station on such terms and conditions as this Hon'ble Court may deem fit and proper.

(b) This Hon'ble Court be after examining the legality, propriety and validity thereof be pleased to quash and set aside the impugned order dated 15.10.2019.

(c) That the appellant be allowed to be released on cash bail in lieu of surety for such a period as this Hon'ble Court may deem fit and proper.”

2. Heard the learned counsel appearing for the parties. Perused the papers with the assistance of the learned counsel for the parties.

3. A perusal of the complaint by Santosh Dattu Jadhav reveals that on 14.02.2016, at around 3:00 p.m to 3:30 p.m., he visisted the office of Vishal Pagare (deceased). At that time, Vicky Abgad, Vishal Shejwal, Manish Gawali, Vikas Ahire, Shivaji Nikam, Sagar Pagare were

also present. It appears that the complainant was informed by Sagar Pagare that in the afternoon at about 2:30 to 3:00 p.m. there was some altercation between Vishal Pagare on one hand and Ravi Kushwah and his nephew (Chakna) on the other hand, over the business of “Mawa”. It appears that, in the evening on the same day at about 7:00 to 7.15 p.m., the Complainant, Vishal Pagare, Vikas Abgad, Manish Gawali, Shivaji Nikam, Vikas Ahire were sitting outside the office. At that time, Vishal Pagare received a call on his mobile and he informed them that Ravi Kushwah had called him and asked him to come near the railway station. It appears that the complainant, Vicky Abgad, Manish Gawali, Shivaji Nikam, Vikas Ahire accompanied Vishal Pagare and they left for the railway station. It appears that they met Ravi Kushwah and Jaideep on the way. At that time, the appellant said (‘मारो इसको’) and thereafter around 20 to 25 people holding sword, iron rod, wooden stick and chopper rushed in their direction. It appears that Vishal Pagare was assaulted by Ravi Kushwah with the sword and the Complainant was assaulted by the nephew of Ravi Kushwah with a wooden stick. It appears that, the appellant’s nephew (Chakna) pointed a revolver at Vishal Pagare and

started assaulting him. The appellant's brother assaulted Vicky Abgad on his head and leg.

4. A perusal of the statement of Vikas @ Vicky Rajendra Abgad, who was assaulted in the incident, reveals that the deceased Vishal Pagare and Ravi Kushwah were engaged in the business of *Mawa* transport at Kalyan Railway Station Parcel; that Vikas was well acquainted with the appellant and the appellant's brother Lakhan Kushwah; that on 14.02.2016, he and Vishal pagare had come on their office and after sometime Santosh Jadhav, Vijay Jadhav, Manish Gawali, Sagar Pagare, had also come to the office; that at about 2:30 to 3:00 p.m., there was some altercation between Vishal Pagare and Ravi Kushwah regarding the *Mawa* business. It further appears that, in the evening on the same day at about 07:00 p.m., Vishal Pagare received a phone call from either Ravi Kushwah or Lakhan Kushwah; that Vishal Pagare informed him that Ravi Kushwah had called him near platform no.2. Thereafter, Vicky Abgad, Vishal Pagare, Santosh Jadhav, Vijay Jadhav, Manish Gawali, Vikas Shejwal, Shivaji Nikam, Vikash Aahire, Mohan Pathare went towards platform No.2. It appears that, while going towards railway station, Ravi

Kushwah and Jaydeep Sanap met them near the parking of Kalyan Railway Station platform No.2. At that time, Vishal Pagare inquired with Ravi Kushwah as to what had happened. It appears that, at that time Ravi Kushwah told his people (‘मारो इसको’) and thereafter Ravi Kushwah assaulted Vishal Pagare with a sword. It appears that Lakhan also assaulted the deceased and Vikas.

5. It is also pertinent to note that three independent witnesses – Jay Hanumanat Gawali, Vanita Prakash Yewle and Amirbi Wali Paal, have also witnessed the incident and have stated that about 20 to 30 people armed with swords, chopper, rod and wooden sticks were assaulting Vishal Pagare and Vikas Abgad.

6. Learned counsel appearing for the appellant submits that the statements do not show the assault on any specific body part of Vishal Pagare and that there is no recovery of the sword. He further submits that the alleged incident had occurred near the appellant’s office and hence his presence at the spot was probable. Learned counsel further submits that the CCTV footage does not specifically identify the appellant. Learned counsel further submits that the post-mortem report shows “*punctured*

wound (1+) *infra axillary region, transverse app. 1/2 x 1/2 x 2 cm deep over 10th intercostal space*” and the other injuries are only abrasions. Learned counsel further submits that the other co-accused Jayideep Sanap has been released on bail and hence, claims bail on the ground of parity.

7. The learned APP opposes the appeal and submits that no interference is warranted. Learned APP further submits that the statements reveal motive and that the eye witnesses have identified the appellant.

8. It is trite that at this stage, while considering the application for bail, the Court is not expected to sift through the evidence and come to a conclusive finding, as the same may prejudice the trial. The consistent statements of the eye witnesses allege the presence of the appellant at the spot, armed with the sword, and assault on the deceased with the sword. Thus, the statements of the witnesses are consistent. *Prima facie*, it also appears that the appellant had motive to assault the deceased.

9. It is pertinent to note, that the role ascribed to the co-accused who has been released on bail is not similar to the role of the present

appellant and hence, the appellant cannot claim parity with the co-accused Jaydeep Sanap.

10. As far as delay in commencement with the trial is concerned, having regard to the fact, that the appellant is in custody since, 2016, we are inclined to expedite the trial.

11. Considering the nature of the offence and the alleged role of the appellant, we are of the opinion, that it is not a fit case for grant of bail.

12. We, accordingly pass the following order.

:: ORDER ::

- (i) The Criminal Appeal is hereby dismissed;
- (ii) We are informed that the charge is framed in the said case and hence we expedite the trial of the Appellant. The Learned Judge to conclude the case as expeditiously as possible and in any event, within 12 months from the date of receipt of this order;

- (iii) Accordingly, the Appeal is disposed of;
- (iv) All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.