

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 635 of 2020

Aakash Ramesh Gore .. Applicant
Versus
The State of Maharashtra .. Respondent
...
Mr. Ajit Savagave with Gaurav Gaikwad for the applicant.
Ms.A.A. Takalkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 23rd JUNE, 2022

P.C:-

1 The applicant is charged in C.R.No. 52/2019 registered with Ulhasnagar Police Station for the offences punishable u/s.302, 326, 341, 143, 147, 147, 149, 504 of the IPC.

2 The applicant is arraigned as Accused no.5 and as far as accused nos.1 to 3 are concerned, they were granted protection from arrest, whereas accused no.4 who was arrested on 27/6/2019 is released on bail.

3 The applicant seek his liberty on the ground that he has been falsely implicated in the subject C.R with an ulterior motive. It is his case that his name is not taken in the FIR and the FIR is based on hear-say evidence and the injured Ajay Bhalerao

has not taken his name while informing the incident to the complainant and even in his statement recorded u/s.164, he do not implicate the present applicant.

In any case, it is submitted that there is no Test Identification Parade conducted, so as to ascertain the complicity of the applicant in the incident. Lastly, it is submitted on behalf of the applicant that the deceased Ravi Sharma died on 8/6/2019 i.e. after a gap of 4 months after the incident took place i.e. on 12/2/2019 and the cause of death is opined to be 'septicaemia'.

4 With the assistance of the learned counsel for the applicant and the learned APP, I have perused the material compiled in the charge-sheet.

The subject C.R came to be registered on a complaint filed by one Suman Sharma, who was informed by her son's friend Ajay Bhalerao, on 11/2/2019, that while he along with her son Ravi were approaching to the house of their common friend Sonu Gopal for handing over his vehicle, at around 10.30 p.m, when they arrived near the electric transformer in Azad Nagar, five named persons and 3 to 4 other persons were standing on the road and Akshay Singh stopped the vehicle. He pulled Ajay from the motor-cycle and resultantly, even his friend Ravi also fell down. The complainant further state that, as narrated to her by Ajay, all the persons were armed with weapons like wooden sticks and iron rods and they started assaulting him. However, since

certain persons came to their rescue, they were spared. They were taken to the hospital and the complaint came to be registered at the instance of mother of deceased Ravi.

5 Spot panchnama was conducted on 13/2/2019 and certain wooden sticks and stumps came to be recovered. The complainant got her supplementary statement recorded on 10/6/2019 i.e. after a period of almost four months, where she named the applicant 'Akash Ramesh Gore'. The said statement came to be recorded since her son died on 6/6/2019. This prompted the prosecution to add Section 302 to the C.R. in question.

6 The statement of Ajay, one of the injured came to be recorded on 14/2/2019, where he named the persons who assaulted him and Ravi Sharma (the deceased) but name of one Akash Kale is taken by the said witness, whereas the applicant is Akash Ramesh Gore, and he was not named even by Ajay Bhalerao. While describing the incident, Ajay has stated that when he fell on the ground on being pulled from the motor-cycle, at that time, Vijay Kale, Akash Kale and others caught hold of him and assaulted him by means of wooden stick and fists and blows, whereas Akshay Singh, Chintu, Ranjit, Sunil Kale and other persons mounted an attack by iron rod, wooden sticks and fists and blows, and brutally assaulted his friend Ravi, which resulted injuries on his leg, head, chest, back etc.

7 The statements of witnesses compiled in the charge-sheet are to the effect that the witnesses were not able to identify the persons on account of the darkness, but report that the incident had taken place. When an inquiry was made with Ajay, the witness state that the applicant was also one of the assailants. Similarly is the statement of Shri Dev Narayan Singh, Darshan P. Singh statement of one Vicky Kamble who claim to be an eye witness and a passer-by when the crowd had gathered near Nizamuddin, Azad Nagar. He state that Akshay Singh, Chintu, Akash Gore, Vijay Kale, Abhishek Yadav, Ranjit, Sunil Kale were the assailants. He further state that Ajay and Ravi were lying on the ground and Akshay Singh was assaulting him. The statement of Vishnu Lahane is also to the effect that Akshay Singh was assaulting the victims along with other persons.

8 During the course of investigation, statement of Ajay Bhalerao, the injured, is recorded u/s.164, but he do not make any reference to the present applicant.

When the cause of death of the deceased is ascertained, it is analyzed as '*death due to septicaemia due to long standing vegetation state*'

9 In the wake of the aforesaid material, since the name of the applicant was not given by the complainant and she named one Akash Kale, and since the victim Ajay in his 164 statement,

also do not implicate the present applicant and in the entire charge-sheet, what is attributed to him is recovery of iron rod from an open place by recording memorandum u/s.27 of the Indian Evidence Act. As far as accused nos.1 to 3 are concerned, who are the main accused, they are already released on bail and even accused no.4 Ranjit is also released on bail. Vijay Kale is shown as 'absconding accused'.

10 In order to identify the applicant who was the assailant, no Test Identification Parade has been conducted, particularly when the FIR name Akash Kale as one of the assailant, and only after the death of her son, the complainant took the name of Akash Gore (applicant) as one of the assailant. The applicant is arrested since 28/9/2019 when all other accused persons were released on bail.

11 The learned APP state that the applicant has antecedents and on perusal of the entire list of the offences registered against him, largely the offences are under Section 380 of IPC along with Section 454 & 457. There is also one offence u/s.302, 326, registered in the year 2019, where he is released on bail in anticipation of his arrest.

12 In the wake of the aforesaid circumstances, the applicant deserve his release on bail as material against him, is compiled in the charge-sheet and all the co-accused are released on bail. This is however, subject to the stringent condition that

the applicant shall not enter Taluka Kalyan, District Thane, where the complainant is residing. Hence, the following order :-

O R D E R

- (a) The Applicant – Aakash Ramesh Gore in connection with C.R.No. 52/2019 registered with Ulhasnagar Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
 - (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
 - (c) The applicant shall not set his foot within the jurisdiction of Taluka Kalyan, District Thane. He shall mark his attendance on first Monday of every month in Ulhasnagar police station and attend the trial.
- 9 The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)