

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

CRIMINAL BAIL APPLICATION NO.866 OF 2021

Mahesh @ Dada Dinkar Shingare ...Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Aniket Nikam a/w Mr.Aashish Satpute for the Applicant.

Mr.A.R. Kapadnis, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 14 MARCH 2022

P.C.

. By this Application, the Applicant is seeking bail. The Applicant along with the co-accused has been charge-sheeted for having intentionally caused death of Tushar Bhapkar.

2. The offence at Crime No.1398 of 2018 registered against the Applicant and others, with Hadapsar Police Station, under Section 302 read with Section 34 of the Indian Penal Code, Section 4/25 of the Arms Act and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act, on the basis of the complaint dated 28 November 2018 lodged by Sarika Mohan Bhapkar who is mother of the deceased. Admittedly, the first informant is not the eye witness. During the course of the investigation the statement of the eye witnesses namely Sanjay

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Chavan, Vijay Chavan, Nikhil Wable and Amol Kamble came to be recorded.

3. The incident in question has happened on 28 November 2018 at about 8.00 p.m. in front of the house of Subhash Shengare at Village Manjri Budruak, Tahasil-Haveli, District-Pune in which the Applicant and the co-accused are alleged to have assaulted the deceased by means of an iron rod and a scythe.

4. Insofar as the present Applicant is concerned eye witnesses claim that the Applicant had assaulted the deceased by an iron rod on his legs and head. There is recovery of clothes of the Applicant in which the blood stains were noticed on the pant of the Applicant. Upon investigation a charge-sheet is filed.

5. I have heard the learned counsel for the parties. Perused record.

6. It is submitted by the learned counsel for the Applicant that the Applicant has not been named in the FIR. It is submitted that the role attributed to the Applicant is of an assault by an iron rod on the chest and legs. However, there is no corresponding injury noted in the postmortem report and therefore medical evidence does not support the claim of the eye

witnesses. It is submitted that there is no recovery of the iron rod from the Applicant and significantly T-shirt which has been seized from the Applicant does not bear blood stains. He submitted that the Applicant has been falsely implicated and the Applicant is in custody since 3½ years.

7. The learned Additional Public Prosecutor submitted that there is eye witnesses account of the incident, attributing a specific role to the Applicant and the same is supported by the medical evidence as there are as many as 20 external injuries found on the person of the deceased. In the submission of the learned Additional Public Prosecutor, injury No.20 (Column No.17) is attributable to the assault by the Applicant. He submitted that, in any event, this is a case of common intention amongst the accused to assault the deceased with an intention to cause his death.

8. I have considered the circumstances and the submissions made. *Prima facie* it can be seen that the eye witnesses have attributed the role to the Applicant of an assault by an iron rod on the chest and legs of the deceased.

9. I have noted the injuries. It cannot be accepted that there is no injury which can be attributed to the assault by the Applicant. Thus the contention that the medical evidence does

not support the statements of the eye witnesses cannot *prima facie* be accepted.

10. Insofar as the absence of the name of the Applicant in the FIR is concerned, admittedly the mother of the deceased who is the first informant, is not an eye witness to the incident. There is recovery of clothes from the Applicant of a T-shirt and a pant, out of which the pant is bearing blood stains. The Applicant is charge-sheeted for a capital offence. No case for grant of bail is made out. The Criminal Application stands rejected.

C.V. BHADANG, J.