

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 785 OF 2022

Jayesh Ashok Julve @ Juwale .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Mr. Niranjana Mundargi with Keral Mehta i/b Vinesh Jain with
B.D. Shinde for the applicant.
Mr. S.H.Yadav, APP for the State.
PSI Shri Wadkar from Dombivli police station.

CORAM: BHARATI DANGRE, J.
DATED : 10th AUGUST 2022

P.C:-

1 The applicant is charged for the offence punishable
u/s.302, 323, 324, 504, 141, 143, 147, 148, 149 of the IPC in
C.R.No.283/2020 registered on 18/9/2020. The applicant is
arraigned as Accused no.3 and he came to be arrested on
18/9/2020. On being charge-sheeted, he is waiting for the trial to
commence and it is stated that till date, no charge has not been
framed.

2 With the assistance of the learned counsel
Mr.Mundargi and the learned APP Mr.Yadav, I have perused the
material compiled in the charge-sheet.

The complainant is one Raju Dhotre, a driver by occupation who reported to the police station on 18/9/2020, narrating that on 17/9/2020 at around 4.00 p.m, he received a call from his brother-in-law Santosh, inviting him for dinner. The complainant accompanied, by his friend Shivaji Khandagale reached the house of Santosh at 10.00 pm and after having dinner, he was informed that five months back, one Aniket, his cousin brother had met Santosh and disclosed to him that Mahesh Gunjal had abused Raju i.e. the complainant. The complainant expressed that he is not even acquainted to Mahesh and thereafter, his telephone number was obtained from a common friend and the complainant made a phone call to Mahesh at 23.45 hours and questioned him as to why he had abused him. At the other end, it is alleged that Mahesh once again abused him and asked him to come in the lane of Pragati College.

As a consequence, on 00.25 hours, the complainant accompanied with Santosh and his friend Shivaji reached the place suggested by Mahesh, to find that he was accompanied with three to four friends. Santosh pointed out Mahesh Gunjal to the complainant who was accompanied by his friends Nikhil, Jayesh (applicant), Ashish and Appa. When Mahesh and his gang was confronted, suddenly, they started mounting assault on his brother-in-law Santosh as well as his friend Shivaji Khandagale.

3 As per the complainant's version, Mahesh and Nikhil were armed with iron rods and Jayesh (applicant) was holding a stump. Ashish Walmiki was alleged to have a sword in his hand, whereas Appa, i.e. close friend of Mahesh was holding the stump.

Referring to the act of assault, it is stated that all the assailants attacked the three and Ashish is alleged to have assaulted the complainant on his back by means of a sword, whereas Mahesh and Nikhil started assaulting Shivaji by means of iron rods, which they were holding and he was assaulted in his head. Resultantly, he fell down and all the assailants fled from the spot. The injured were taken to the hospital and the offence came to be registered.

4 On the investigating machinery set into motion, the injured were referred to the hospital and since Shivaji succumbed to the injuries, autopsy was carried out. During the course of investigation, statements of the eye witnesses are recorded, which include the statement of Santosh, one of the injured.

5 Corroborating the narration of the events stated by the complainant, Santosh also state that Mahesh and Nikhil assaulted by means of iron rods and Jayesh and Appa, who were carrying stumps, mounted an assault on their back and legs. Ashish is stated to have mounted an assault on the complainant Raju and when Shivaji intervened, Mahesh and Nikhil also assaulted him by means of iron rod.

6 The statement of Santosh corroborate the version of the complainant. The post mortem report refer to a lacerated injury over scalp, approximately 3 x 1 x 0.5 cm and column no.19 of the post mortem refer to a corresponding injury on the scalp at mid occipital region approx. 3 x 1 x 0.5 cm, though there is no fracture of the skull. The cause of death has been assigned '*shock due to subdural hematoma due to head injury*'.

7 Thus, the injury indicated in column no.17 as lacerated injury over scalp is 3 x 1 0.5 c.m. As far as the injuries sustained by the two injured i.e. the complainant and Santosh are concerned, the complainant sustained a contusion over scalp and a lacerated injury on the back mid spinal region which are described as 'simple injuries', whereas the injury certificate of Santosh do not refer to any external injury.

8 The learned APP place reliance upon the statement of one Deepak Mhadse recorded on 22/9/2020, but on careful reading the statement, it is apparent that he is not an eye witness to the incident in entirety and he has only witnessed the applicant being armed with a stump and on being petrified, he took shelter in his rickshaw and came out only when the police arrived at the spot.

 The learned APP would also submit that the applicant is facing the charge of murder along with Section 143,147, 148 and 149 of the IPC and since his involvement has

surfaced on record through the statements of witnesses and he shared the common object with the co-accused who have mounted attack on Shivaji and caused his death. In any case, the common object will have to be established at the time of trial and the evidence compiled in the charge-sheet, attribute him the role of assaulting Santosh, who apparently, did not sustain any injury, the incarceration of the applicant on completion of investigation is unnecessary.

The applicant therefore, deserve his release on bail subject to the following.

ORDER

- (a) The Applicant – Jayesh Ashok Julve @ Juwale in connection with C.R.No.I-283 registered with Dombivali 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 mark his attendance on first Monday of every month between 10.00 am to 12 noon till framing of charge.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)