

Santosh

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

BAIL APPLICATION NO. 795 OF 2022

Rahul Pralhad Jamdar

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Veerdhawal Deshmukh, a/w Sagar Tambe, for the
Applicant.

Mrs. M. R. Tidke, APP for the State.

CORAM: N. J. JAMADAR, J.

DATED : 14th July, 2022

ORDER:-

1. By virtue of this application under Section 439 of the Code of Criminal Procedure, 1973, (the Code), the applicant seeks to be enlarged on bail.

2. The applicant, who is arraigned in CR No.1016 of 2018, registered with Indapur Police Station, District Pune, for the offences punishable under Sections 120B, 302, 307, 341, 143, 147, 148, 149 and 506 of the Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

3. The indictment against the applicant and the co-accused runs as under:

(a) Balu Shelar (the deceased) was the brother of the Pravin Shelar (the first informant). In the year 2018, the first informant had a quarrel with Nilesh Bansode (A5). Nilesh Bansode (A5) had stabbed the first informant. The deceased had attempted to assault Nilesh (A5). Sumit Jamadar (A1) had mistakenly sustained injuries. On the said count, there was a rivalry between the deceased and Sumit (A1) and his associates. Sumit (A1) had threatened to eliminate the deceased.

(b) The prosecution alleges, accused nos.1 to 12, including Rahul Jamadar (A3), the applicant, entered into a criminal conspiracy to eliminate the deceased. Pursuant to the said conspiracy on 9th December, 2018 in between 6.00 to 6.30 pm. while the deceased and Javed Shaikh (the injured) were on their way to home, co-accused Uttam (A6), Kiran Shinde (A2), Amit Jamadar (A4), Anna Bhosale (A8), Kedar Jadav (A9) and Balasaheb Chavan (A10) kept a vigil on the movements of the deceased. Nitin Jamdar (A7) intercepted the motorcycle of the deceased by halting the Scorpio jeep across the said motorcycle. Sumit (A1), applicant, Nilesh Bansode (A5), Uttam Bansode (A6), Nitin Jadhav (A7), Ajit Chavan (A11) and Vikas Jadhav (A12) alighted from the Scorpio jeep. Sumit (A1) was armed with an axe. Applicant was armed with a scythe.

Nilesh (A5), Uttam (A6) and Vikas (A12) were also armed with scythes. Ajit Chavan (A11) was armed with a wooden log. Sumit (A1) and Nilesh (A5) assaulted the deceased by means of axe and scythe. The accused also assaulted the injured. The deceased succumbed to the injuries.

4. The applicant came to be arrested on 16th December, 2018. Post completion of investigation, charge-sheet has been lodged. The applicant has preferred this application for release on bail on the ground that there is no material to connect the applicant with the offence. Since co-accused Uttam (A6) has been released by this Court, the applicant is entitled to be released on bail on the ground of parity as well.

5. I have heard Mr. Deshkumkh, the learned Counsel for the applicant and Mrs. Tidke, the learned APP for the State, at some length. With the assistance of the learned Counsels for the parties, I have perused the report under Section 173 of the Code and the documents annexed with it.

6. At the outset, it is imperative to note that Pravin Shelar, the first informant, lodged the report on the basis of narration of the occurrence by Javed Shaikh, the injured witness, who accompanied the deceased at the time of the alleged occurrence. Javed Shaikh, in his statement before police, states that on the

day of occurrence while he and the deceased were proceeding on a Bullet motorcycle, a Scorpio jeep intercepted them. Sumit (A1), applicant, Rahul (A3), Balu (A6), Nilesh (A5) and two unknown persons alighted therefrom. Nitin Jamdar (A7), who was on the wheel of the said Scorpio, did not alight. Co-accused Sumit (A1) was armed with an axe, applicant Rahul was armed with scythe, co-accused Balu (A6) and Nilesh (A5) were also armed with scythes. Out of the two unknown persons one had scythe and another had a wooden log. Co-accused Sumit (A1) and Nilesh (A5) assaulted the deceased by means of axe and scythe. Somebody assaulted him on his head by means of a weapon. He fell down. Co-accused Sumit (A1) and Nilesh (A5) continued to unleash the blows on the deceased. The deceased fell unconscious, on the spot. Thereupon the assailants fled away.

7. In his statement recorded under Section 164 of the Code before the learned Magistrate, Javed Shaikh, the injured reiterates that all the assailants alighted from the Scorpio jeep including the applicant. Co-accused Sumit (A1) and Nilesh (A5) assaulted the deceased by means of axe and scythe. He was also assaulted in the said occurrence and lost consciousness.

According to Javed Shaikh, the deceased was pleading with Sumit (A1) not to assault him.

8. The statement of Shivaji Suryavanshi, who claims to be an eye witness to the occurrence proceeds on similar lines. For Shivaji Suryavanshi also, co-accused Sumit (A1) and Nilesh (A5) assaulted the deceased by means of axe and scythe, with which they were respectively armed. One of them assaulted the injured Javed.

9. Shivaji Jadhav, another witness, gave identical version. The role of assaulting the deceased was attributed to co-accused Sumit (A1) and Nilesh (A5).

10. *Prima facie*, the applicant is alleged to be one of the members of the unlawful assembly. The applicant was allegedly armed with a scythe. However, neither the injured witness Javed Shaikh nor the eye witnesses to the occurrence have attributed to the applicant the role of perpetrating assault either on the deceased or injured Javed Shaikh. While enlarging the co-accused Uttam (A6) on bail this Court noted that no overt act was attributed to the said accused by the injured in the statement either under Section 161 or Section 164 of the Code. It was noted that the role of assault upon the deceased was attributed to co-accused Sumit (A1) and Nilesh (A5).

11. The learned APP would, however, urge that since the presence of the accused has been consistently stated by all the witnesses, and the offenses have been committed in prosecution of the common object of the unlawful assembly, the applicant does not deserve to be enlarged bail. The learned APP banked upon a disclosure statement made by the applicant leading to the recovery of the motorcycle which was used by the applicant to find out the location of the deceased.

12. It is true that the allegations are of hatching conspiracy and committing the murder of the deceased in prosecution of the common object of the unlawful assembly. However, the fact that no role of actual assault is attributed to the applicant by any of the witnesses, cannot be said to be immaterial or inconsequential. This assumes significance in the context of the fact that the witnesses have consistently named the co-accused who assaulted the deceased. Undoubtedly, overt act by each of the members of unlawful assembly is not necessary. The question as to whether the applicant was also animated by the common object of the unlawful assembly is essentially a matter for trial. However, having regard to the fact that the applicant is in custody since 16th December, 2018 and no overt act has been attributed to the applicant, in my view, the applicant does not

deserve to be detained as an under-trial prisoner till the conclusion of the trial, which may take time.

13. From the stand point of absence of any overt act, the applicant can be stated to be similarly circumstanced like Uttam (A6), who is ordered to be released on bail. Therefore, the applicant is entitled for exercise of discretion.

14. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Rahul Pralhad Jamdar be released on bail, in CR No.1016/2018, registered with Indapur Police Station, on furnishing a P. R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount to the satisfaction of the learned Sessions Judge.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (iv) The applicant shall furnish his permanent residential address and contact details including cellphone number to the Police Inspector, Indapur Police

Station within one week of his release from prison and intimate the change, if any.

(v) The applicant shall mark his presence at Indapur Police Station on the first Monday of every month in between 11.00 am. to 1.00 pm. till the conclusion of the trial.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

(viii) All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]