

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.838 OF 2022

Balasaheb Pandharinath Shingar

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Aniket Nikam i/b. Vivek Arote, for the Applicant

Ms. P.N. Dabholkar, APP, for the State.

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CORAM : N. J. JAMADAR, J.

DATE : JULY 12, 2022

P.C.:

1. This is an application for bail under section 439 of Code of Criminal Procedure, 1973 in connection with C.R. No. 554 of 2020 registered with Nashik Road police station for the offences punishable under sections 302 and 323 read with 34 of Indian Penal Code, 1860.

2. The prosecution case runs as under:-

Prakash Dhale (the deceased) was the maternal uncle of Rahul Jamdade (the first informant). On 27th October, 2020 at about 10 pm the first informant, his friends Ravi Chandne and Abba Sonavane were taking walk post dinner at Akalhara Road. The deceased was riding a motor-cycle on his way to home. The applicant accosted the deceased. An altercation ensued between the applicant and the deceased. The applicant made a call to somebody.

The co-accused Ankul Pal, Sagar Shingar and another son of the applicant, a child in conflict with law, reached thereat riding pillion on the motor-cycle of Ankul Pal. The co-accused Sagar and the child in conflict with law started assaulting the deceased by means of fists and kick blows. The co-accused Sagar and the child in conflict with law started assaulting the deceased by means of fists and kick blows. The co-accused Sagar was armed with a base ball stick. He assaulted on the head of the deceased. The deceased fell down. Yet the co-accused Sagar and the child in conflict with law continued to unleash the blows by means of baseball stick and fists and kick blows. The first informant and his friend tried to save the deceased. Anita Shingar, the wife of the applicant also reached thereat and assaulted him by kick blows amidst exhortation that 'if he dies let him die'. The deceased was shifted to BITCO Hospital. However, he was declared dead. The applicant and the co-accused were arrested. Post completion of investigation, charge-sheet has been lodged.

3. I have heard Mr. Aniket Nikam, learned counsel for the applicant and Ms. Dabholkar, learned APP, for the State at some length. With the assistance of the learned counsel for the applicant, I have perused the report under section 173 and the documents annexed with it.

4. Mr. Nikam, learned counsel for the applicant, submitted that the applicant was also assaulted in the said occurrence. The applicant had lodged a report leading to registration of C.R. No. 555 of 2020 for the offences punishable under sections 326, 325, 323, 143, 147, 148, 452, 427 of Indian Penal Code, 1860 and section 135 of Maharashtra Police Act, 1951 and section 4 read with 25 of Arms Act. This fact is borne out by the charge-sheet as it is recorded that the applicant was not arrested as he was seriously injured. Mr. Nikam has tendered a copy of the charge-sheet filed in C.R. No. 555 of 2020.

5. Mr. Nikam endeavoured to draw home the point that the applicant was assaulted in the course of same occurrence. I am afraid to accede to this submission. The report dated 20th October, 2020 lodged by the applicant indicates that they were assaulted after the first incident was over and while they were on their way to police station to lodge the report.

6. It was further submitted on behalf of the applicant that the incident occurred at the spur of the moment. The deceased sustained only one head injury. The applicant was not armed with any weapon. Nor is it alleged that the applicant gave the fatal blow.

In the circumstances, the applicant deserves to be released on bail.

7. In opposition to this, Ms. Dabholkar, learned APP submitted that the presence of the applicant at the scene of occurrence is indisputable. In fact, it was the applicant who called the assailants at the scene of occurrence over a trivial dispute. Therefore, it cannot be said that the applicant did not share the common intention to cause the death of the deceased. From this stand point, according to the learned APP, the applicant does not deserve to be enlarged on bail.

8. I have given anxious consideration to the aforesaid submissions. First and foremost, the first informant has categorically asserted that the blow by means of baseball stick was given by the co-accused Sagar. The juvenile in conflict with law also allegedly assaulted the deceased by means of baseball stick, fist and kick blows. The role attributed to the applicant was that of exhorting his sons to beat the deceased. The first informant does not allege that the applicant also assaulted the deceased.

9. Ravi Chandne and Abba Sonavane, the friends of the first informant, are unison on the point that it was the co-accused Sagar

who gave the fatal blow. They have also not attributed the role of assaulting the deceased to the first informant.

10. It would be contextually relevant to note that the autopsy surgeon noted the following external injury:

“Laceration of size 10 cm x 2 cm x scalp deep was present over parietal region of scalp in midline, 11.5 cm above eye brow. Margins of the wound were contused and irregular.

11. In the opinion of autopsy surgeon the cause of the death was “cranio-cerebral damage due to blunt trauma to head”. The medical evidence thus, prima facie, indicates that the head injury suffered by the deceased is co-related to the assault by co-accused Sagar by means of baseball stick.

12. In the backdrop of the aforesaid ocular account and the medical evidence, prima facie, the role attributed to the applicant appears to be distinct from the role of the assailants. Whether the applicant can be said to have shared common intention to cause the death of the deceased, for the reason that the applicant had called his sons to the scene of occurrence and thereupon they assaulted the deceased, as urged by Ms. Dabholkar, is a matter for evidence

and trial. At this stage, in the light of the role attributed to the applicant, a prima facie case for exercise of discretion is made out.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Balasaheb Pandharinath Shingar be released on bail in connection with C.R. No. 554 of 2020 registered with Nashik Road police, on furnishing a P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.
- 3] The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- 4] The applicant shall furnish his permanent address and contact details to the Inspector of Police, Nashik Road police station and intimate change, if any.
- 5] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 6] 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.

(N. J. JAMADAR, J.)