

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

CRIMINAL BAIL APPLICATION NO. 1042 OF 2022

Shubham Naresh Gulakhe

..Applicant.

Versus

The State of Maharashtra

..Respondent

Mr. Shailesh Kharat for Applicant.

Mr. P. H. Gaikwad, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th OCTOBER 2022

PC :

1. This is second bail application preferred by the same applicant. The Applicant had earlier approached this Court vide Bail Application No. 834 of 2020. On that occasion, simply a praecipe was moved for withdrawal of that bail application without mentioning any reason. The Court was not satisfied with the conduct of the applicant's advocate of seeking withdrawal of the bail application without assigning any reason. Therefore, the application was allowed to be withdrawn. However, no further liberty was granted to the applicant to file any other bail application either in this court or in the trial court. That order was

passed on 15/01/2021. After that, more than one and half years have passed. There is absolutely no progress in the trial. Even till today, Charges are not framed. Therefore, in the interest of justice, I have heard Shri. Kharat learned counsel for the Applicant on merits of the matter. I have also heard learned APP Shri. Gaikwad.

2. The Applicant is seeking his release on bail in connection with C.R.No.589 of 2018 registered with Chatushrungi police station on 01/11/2018. Initially, the offence was registered mainly U/s.307 of the I.P.C., however, subsequent to the death of the deceased Rohit, Section 302 of I.P.C. was added. The investigation was carried out and the charge-sheet was filed. The charge-sheet is filed for commission of offence punishable U/s.302, 120-B, 143, 144, 147, 148 and 149 of I.P.C., U/s.4 (25) of Indian Arms Act and U/s.37 of Maharashtra Police Act. The F.I.R. is lodged by Akash Junawane on 01/11/2018. However, he was not an eye witness and he has informed the police about the assault on Rohit, which he came to know from others. The important witnesses in this case are the eye witnesses Abhijeet Kshirsagar, Swati Navghane, Vilas Navghane and Jaya Junawane. Their narration is important.

Learned counsel for the applicant submitted that the applicant was arrested on 05/11/2018. Neither of these witnesses has named the applicant in their statements.

3. The prosecution case is that, apart from the main accused there were some unknown persons who had taken part in the assault, therefore, allegations are that the applicant was one of those unknown persons. Shri. Kharat submitted that the test identification parade was held belatedly on 02/01/2019; almost after two months from the arrest of the applicant. There is no explanation offered anywhere in the charge-sheet. Out of these four witnesses, only three witnesses i.e. Vilas, Swati and Abhijeet were asked to identify the suspects. Out of them, only Vilas and Abhijeet have identified the applicant. The witness Swati Navghane did not identify the appellant. He, however, submitted that, in any case the role attributed to the present applicant is vague and general allegations are made that, he took part in the assault by giving kicks and fist blows.

4. Learned APP opposed this application. He submitted that

the offence is brutal and the deceased had suffered many serious injuries on his vital parts with choppers. The applicant's role can be seen from the statement of Vilas and Abhijeet. Therefore, bail should not be granted to the applicant.

5. I have considered these submissions. The applicant is in custody since 05/11/2018. There is absolutely no progress in the trial. Therefore, from that point of view I have tested the material against him. At the highest, material against him is that, he had taken part in the assault by assaulting the deceased by kicks and fist blows. These allegations are general and vague. For that purpose the prosecution is relying on the statements of Vilas and Abhijeet. Both of them have stated that, on the date of incident i.e. on 01/11/2018 at about 5.30a.m. they saw that Rohit was encircled by about 9 persons. Out of them, Pratik Kadam, Amol Choramale, Akash Kedari and Kiran Gaikwad were assaulting Rohit with *koyta* on his head and back. They were accompanied by four others and they were preventing Rohit from running away. They assaulted Rohit with kicks and fist blows. One Kiran Dhende also assaulted Rohit with *sattur* on his head and hands. Similar

narration is given by Swati. Thus, the main role is attributed to Pratik Kadam, Amol Chormale, Akash Kedari, Kiran Gaikwad and Kiran Dhende. They were attributed specific role and specific weapon. The postmortem notes show that the deceased had suffered 30 injuries. Out of which, except for injury Nos.14, 28, 29 and 30 all were either incised wounds or chop wounds. Thus, though the offence is brutal, the evidence against the applicant appears to be weak. No specific role is attributed to him. The statements show that, except those five persons who were named and who had assaulted the deceased with deadly weapons, the others were not carrying weapons. The allegations against them are vague. One of the important eye witnesses Swati Navghane has not identified the applicant, though, she had attended the test identification parade. The only witnesses who identified the applicant in the test identification parade are Vilas and Abhijeet. In this view of the matter, the evidence against the applicant does not appear to be very strong. This has to be seen, particularly, in the light of the fact that, trial is taking very long time even to commence. Considering all these aspects, it would not be proper to

detain the applicant any further as an under trial prisoner. He deserves to be released on bail.

6. Hence, the order:

O R D E R

- i) In connection with C.R.No.589 of 2018 registered with Chatushrungi police station, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii) The Applicant shall attend the concerned Police Station once in every fortnight till the Charges are framed.
- iii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)