

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

CRIMINAL BAIL APPLICATION NO.1377 OF 2021

Swapnil Shankar Gaikwad

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr. Aniket V. Nikam for the Applicant.

Mr. Y. Y. Dabke, APP for the Respondent – State.

CORAM : C.V. BHADANG, J.

DATE : 5 JANUARY 2022

(Through Video Conferencing)

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. The Applicant (Accused No.26) along with co-accused is facing prosecution for the offence punishable under Section 302, 307, 323, 324, 326, 142, 147, 148, 149, 504 and 506 of the Indian Penal Code.

2. The prosecution case as disclosed from the complaint lodged by Ramesh Gaikwad is that on 31 May 2020 at about 9.00 p.m. there was an incident in which one Ajit Lahnu Gaikwad and Sachin Gaikwad had come on their pulsar motorcycle where the children of the cousin brother of the complainant namely Nitin Gaikwad were playing. The complainant tried to

persuade Ajit Gaikwad and Sachin Gaikwad to drive slowly where upon an altercation and incident of abuse and threatening took place which is the genesis of the incident which happened shortly thereafter in which one Lahnu Gaikwad and others are alleged to have formed an unlawful assembly. The complaint dated 31 May 2020 lodged by Ramesh Gaikwad shows that the present Applicant came on the spot in an Ertiga vehicle of one Pravin S. Gaikwad. The gravamen of the allegations made in the complaint dated 31 May 2020 are against Lahanu Gaikwad having assaulted the deceased Bhimaji Gaikwad by an iron rod on his head. There are also allegations about other members of the assembly including Sanket Gaikwad, Rushikesh Gaikwad, Sachin Gaikwad and Kunal Gaikwad having assaulted other members of the rival group. The complainant also suffered injury in the incident.

3. Bhimaji Gaikwad was carried to the hospital and he died on 6 June 2020 during treatment. Incidentally an offence of rioting with Section 326 of the Indian Penal Code was initially registered and on the death of Bhimaji Gaikwad, the offence under Section 302 of IPC was added and after investigation a charge-sheet is filed. There are in all 27 accused in the matter and the present applicant happens to be accused No.26.

4. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor. With the assistance of the learned counsel for the parties I have gone through the record.

5. The learned counsel for the Applicant has submitted that in his complaint recorded on 31 May 2020, the complainant has not attributed any overt act to the Applicant except that the Applicant had come on the spot. It is only in his supplementary statement recorded on 6 June 2020, after the death of Bhimaji Gaikwad there is an allegation about the deceased, being assaulted. It is pointed out that although it is claimed that there were multiple persons who had assaulted deceased with different weapons, the Postmortem report shows only one head injury.

6. The learned counsel pointed out that the co-accused Pravin Gaikwad was granted anticipatory bail by the learned Sessions Judge and the co-accused Sanket Gaikwad, Rushikesh Maruti Gaikwad, Sachin Sailas Gaikwad and Kunal Sharad Gaikwad have been granted bail by this Court by order dated 7 June 2021 in Criminal Bail Application No.1180 of 2020.

7. The learned Additional Public Prosecutor has pointed out that apart from complainant there are 7 to 8 witnesses including Akshay Gaikwad, Ramesh Gaikwad and

Satish Gaikwad who have also stated about assault by the Applicant on the deceased. He submitted that all the persons were members of the unlawful assembly with the common object of assaulting the deceased and therefore the absence of the individual role, if any, is not material.

8. I have carefully considered the circumstances and the submissions made. *Prima facie*, it appears that in the complaint which is lodged immediately after the incident on 31 May 2020 by Ramesh Gaikwad there is no allegation about any overt act which is attributed to the Applicant except that the Applicant had come on the spot in the Ertiga Vehicle of Pravin Gaikwad. It is in this regard that the contention on behalf of the Applicant that only allegation of assault by iron rod is made against Lahanu Gaikwad, has to be appreciated. Deceased died on 6 June 2020 and except the statement of Satish Gaikwad which is recorded on 3 June 2020, the statement of all other witnesses to which reference is made on behalf of the prosecution are recorded on 6 June 2020 i.e. after death of Bhimaji Gaikwad.

9. At least *prima facie* it appears that in the context of the allegation of an assault, by multiple accused, with different weapons there is only one head injury found on the person of the deceased. The PM report does not show any other external injury.

10. Admittedly, there is no recovery of any incriminating article from the Applicant. There are no criminal antecedents to his discredit. The co-accused Sanket Gaikwad, Rushikesh Gaikwad, Sachin Gaikwad and Kunal Gaikwad with the allegation of assaulting other members of the rival group, have been released on bail by this Court.

11. Considering the overall circumstances, the following order is passed.

ORDER

(i) The Applicant shall be released on bail in Cr.No.236 of 2020 registered with Khed Police Station, District-Pune on executing a P.R. bond to the extent of Rs.25,000/- with one or two solvent sureties in the like amount.

(iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(iii) The Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.