

Santosh

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

BAIL APPLICATION NO. 1150 OF 2022

Omkar Chandrashekhar Kapre ...Applicant

Versus

The State of Maharashtra ...Respondent

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SUBHASH
KULKARNI

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Mr. Aniket Nikam, a/w Piyush Toshnival and Amit Icham, i/b
Vivek Arote, for the Applicant.

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

Mr. Anil Survase, Kondhawa Police Station, Pune City,
present.

CORAM: N. J. JAMADAR, J.

DATED : 14th July, 2022

ORDER:-

1. The applicant, who is arraigned in CR No.11 of 2021, registered with Kondhwa Police Station, District Pune, for the offences punishable under Sections 120B, 307, 143, 147, 148, 149, 504 and 427 of the Indian Penal Code, 1860 ("the Penal Code") and Section 4 read with Section 25 of the Arms Act, 1959 and Section 7 of Criminal (Amendment) Act read and Section 135 read with Section 37(1) of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.

2. The indictment against the applicant and the co-accused is as under:

On 3rd January, 2021, at about 10.00 pm., Bipin Lonkar (the first informant) was on his way to Shivneri Nagar, to drop his uncle Atul Phad, in a car bearing No.MH-12/CS-7137. When he came near Lane No.36, Shivneri Nagar, the applicant Omkar Kapre, co-accused Sumit alias Monya Jadhav, other seven to eight persons were standing thereat armed with weapons. Applicant abused the first informant. Thereupon the first informant halted the car. One of the associates of the applicants smashed the headlight of the applicant's car by means of a bamboo stick. The first informant and his uncle Atul Phad alighted from the car. The applicant and his associates charged upon them. The first informant was assaulted by means of bamboo stick on his right bicep, left arm and left rib. The first informant bent down. Thereupon the applicant gave blows by means of a sharp weapon on the head of the first informant. When Atul Phad came to the rescue of the first informant, the applicant and his associates assaulted Atul Phad as well. After having treatment, the first informant approached the Kondhwa Police Station and lodged the report.

3. It further transpired that, on the very night, the applicant had assaulted Kalyan Gaikwad and Mehboob Shaik as well. As

they were friends of Akshay Kamble, who had assaulted Sairaj Lonkar, the friend of the applicant.

4. The applicant came to be arrested on 4th January, 2021. Post completion of investigation, charge-sheet has been lodged.

5. The applicant has preferred this application with the assertion that the offence punishable under Section 307 of the Penal Code is not *prima facie* made out. The applicant has been roped in on account of previous enmity. Investigation is complete. Further detention of the applicant is not warranted.

6. I have heard Mr. Nikam, the learned Counsel for the applicant, and Ms. Dabholkar, the learned APP for the State. 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.

7. Mr. Nikam submitted that there is serious doubt about the circumstances in which the first informant sustained the injuries. Inviting the attention of the Court to the certificate issued by Kala Clinic and Nursing Home, where the history of accidental injury was narrated, Mr. Nikam would urge that the case of assault is improbablized. In any event, according to Mr. Nikam, the injuries sustained by the applicant, noted at Sasoon General Hospital, were simple in nature. Those injuries were

possible by hard and blunt object. In contrast, the first informant and Atul Phad asserted that the applicant assaulted the first informant by means of sharp weapon. Hence, there are material discrepancies in the ocular account and medial evidence.

8. The learned APP, on the other hand, submitted that the fact that history of accidental injury was narrated, does not detract materially from the prosecution version. Banking upon the statement of the first informant Atul Phad, Kalyan Gaikwad and Mehboob Shaikh, who have consistently stated about the violent attack by the applicant, the learned APP would submit that the applicant does not deserve to be released on bail. Attention of the Court was also invited to the antecedents of the applicant, which indicate that in the period of five years, as many as eight offences have been registered against the applicant at Kondhawa Police Station. Thus, the applicant does not deserve to be released on bail, urged the learned APP.

9. I have given anxious consideration to the aforesaid statements. I have also perused the statements of the first informant and the injured witnesses. It would be contextually relevant to note that at Kala Clinic and Nursing Home, where the first informant was initially taken, the Medical Officer found

three CLWs on scalp. The injury certificate issued by Sasoon General Hospital, Pune, indicates that the first informant had sustained CLW on scapular region and CLWs on occipital and frontal region. The Medical Officer opined that the injuries were possible by hard and blunt object. Those injuries were simple. Likewise Kiran Gaikwad had sustained a simple injury. Mehboob Shaikh had sustained a CLW and an abrasion. Those injuries were also possible by hard and blunt object.

10. In the backdrop of the aforesaid injury certificates, if the statements of the first informant and Atul Phad are considered, a cleavage between the ocular account and the medical evidence, qua the role attributed to the applicant, becomes apparent. The witnesses were in unison on the point that the applicant had assaulted the first informant by means of a sharp weapon. *Prima facie*, the Medical Officer did not find an injury by a sharp weapon. During the course of investigation, pursuant to the discovery made by the applicant an iron dagger (*palgan*) with sharp edge, and sticks were recovered.

11. Since the first informant as well as the other injured witnesses have sustained simple injuries by hard and blunt object, the question as to whether an offence punishable under

Section 307 of the Penal Code is made out would warrant adjudication at the trial.

12. The applicant is in custody since 4th January, 2021. The applicant is thus incarcerated for more than one and half year. It is true that there are offences registered against the applicant. All the offences appear to have been registered at Kondhwa Police Station. In the circumstances of the case, in my considered view, a measure to keep him away from the said surrounding would take care of apprehension on the part of the prosecution. Hence, I am inclined to release the applicant on bail subject to certain conditions.

13. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Omkar Chandrashekhar Kapre be released on bail, in CR No.11/2021, registered with Kondhwa Police Station, Pune, 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 not enter into the limits of Pune City, for the period of one year or till the completion of the trial, whichever is earlier, except for attending the proceedings before the Court, without prior permission of the learned Sessions Judge.

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

(vi) 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.]