

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3827 OF 2021

Akshay Guruling Khatale] .. Applicant

vs.

State of Maharashtra] .. Respondent

ALONGWITH

BAIL APPLICATION NO.1816 OF 2022

Aashish @ Gorya Chandrakant Gurav] .. Applicant

vs.

State of Maharashtra] .. Respondent

Mr.Vinod Kashid for Applicant in both Applications.

Mr.S.H. Yadav, APP for State in BA No.3827/2021.

Mrs.A.A.Takalkar, APP for State in BA No.1816/2022.

API J.P. Gavit, Wagale Estate Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 6th OCTOBER, 2022.

P.C.

1] Heard the learned counsel for the Applicant Mr.Vinod Kashid, the learned APP for the State Mr.S.H. Yadav in BA No.3827/.2021 and Mrs.A.A.Takalkar in BA No.1816/2022.

Since both the Applications arise out of the same CR, they are heard collectively and disposed off by this common order.

2] The Applicant, Akshay Guruling Khatale is charged as Accused No.3 and Applicant Aashish @ Gorya Chandrakant Gurav is charged as Accused No.4, in the charge-sheet filed by the prosecution on completion of investigation in CR No.206/2017.

3] The Applicants face charge for the offences under Section 302, 307, 143, 147, 148, 149 of the Indian Penal Code and Section 25(1) of the Indian Arms Act and under Section 37(1), 135 of the Maharashtra Police Act. The accused were arrested immediately after commission of offence and they seek their release on bail on the ground that the material compiled in the charge-sheet is insufficient to establish the charge levelled against them and also on the ground of their long incarceration for last 5 years.

4] With the able assistance of the respective counsel, I have perused the charge-sheet placed on record.

The case of the prosecution which can be discerned therein is to the effect that, the complainant Pramod Vishwakarma is resident of Dr. Gangadhar Nagar, Wagle Estate, Thane and is working at Loismwadi in the garrage of his friend Prashant Sonavane. The said Prashant Sonavane was working as Supervisor in Reliable Plaza Company, Airoli since last three years.

It is alleged that 3 to 4 days prior to the incident, some altercation occurred between the deceased Prashant on one hand and Raj Parab, Aashish Gurav @ Gorya, Manglu and Akshay Khatyal on the other, but the complainant persuaded Prashant to ignore the same.

On 27.10.2017 when brother of Prashant and his friend were

standing at a stall, it is alleged that accused persons including the present two Applicants arrived at the spot on their bikes and made enquiries about Prashant.

5] The alleged incident had taken place on 28.10.2017, when the complainant state that at around 12.30 to 12.45, he noticed Akash, brother of Prashant, proceeding towards his house. At the very same time, the accused persons Raj Parav Aashish Gurav @ Gorya, Akshay Khatyal, Manglu, Aditya Jadhav, Chinmay and other 3 persons armed with sword and gupti were noticed by him when they were proceeding towards Dnyaneshwar Nagar Naka.

It is alleged that the accused persons entered into brawl with him by questioning his supremacy and all the accused assaulted him by means of the weapons and caused injuries on his head, stomach and hand. Since the assailants were more in number, the complainant and the brother of the deceased, Akash did not intervene. But Ashish Athavale, who was present at the post, rushed to inform Prashant's mother about the incident and his brother being petrified left the spot. Prashant was grievously injured and the complainant alongwith one Gorya residing at Dnyaneshwar Nagar, took him to a private hospital by stopping a car and he was admitted, but he was not in a position to speak. The complainant specifically allege that the two Applicants were part of the assault mounted on Prashant.

This resulted in invoking Section 307 of the Indian Penal Code initially, but on the death of Prashant, the offence under Section 302 was involved and investigation was carried out.

6] The complaint recorded his supplementary statement on the next day i.e. on 30.10.2017 and he absolved Chinmay, whom he had mentioned as one of the assailants by stating that since there were many assailants, he gained an impression that one amongst them was Chinmay.

7] During the course of investigation, the spot panchanama was conducted and the body of the deceased was forwarded for autopsy, which recorded multiple injuries in Column No.17. Though the finding of cause of death was kept reserved, the injuries in Column No.17 refer to several suture wounds and Column No.19 refer to subdural haemorrhage along right frontotemporal region alongwith blood clot.

The prosecution recorded statements of several witnesses and apart from the complainant who has named both the Applicants in his complaint, the statement of mother of deceased Prashant has also been compiled in the charge-sheet.

8] The learned counsel for the Applicant has strenuously placed reliance on the statement of Shobha and by referring to the same, he has attempted to demonstrate falsity in the case of prosecution, by submitting that Shobha had narrated that she noticed some boys riding on 3 bikes who crossed her residence and since she was aware that Prashant was at the square, being aware of the background where her son had some animosity with these persons, she rushed to the spot and noticed the assault. According to witness Shobha, Ashish was armed with sword, Akshay was armed with Tocha (pointed iron rod used for breaking ice) and state that other assailants were also armed with distinct weapons and she witnessed all of them assaulting

Prashant and when she howled, the assailants fled away.

9] In contrast, my attention is drawn to the statement of Ashish Athavale to pinpoint the flaw in the prosecution case. In his statement, Ashish Athavale state that at about 12.45 a.m., when he came outside the house to call his father, he noticed one boy rushing to Prashant's house informing, that he was being attacked. At that time, Prashant's mother came out of the house and this witness followed her. When they reached the square, Prashant was lying in a pool of blood with injuries.

Another eye witness to the incident is one Aniket Parte and the learned counsel for the Applicant would submit that he attributed a general role to the accused persons, when he stated that he noticed 9-10 persons on two Activa and two motorcycles with their face masked, arriving at the spot with weapons like sword, gupti, slabs etc. He noticed that all of them mounted an assault on Prashant. Aniket, therefore, rushed to the house of Prashant and informed his mother and then his mother came on the spot.

10] An attempt on behalf of the learned counsel for the Applicant is to demonstrate that there is inconsistency in the version of the prosecution as according to him, Prashant's mother arrived at the spot after she received information from Aniket Parte and she was followed by Ashish Athavale and according to Ashish Athavale, when they reached the spot incident was already over.

11] From the statements of other witnesses which are compiled in

the charge-sheet, which include statement of one Vicky More recorded under Section 164 of the Cr.P.C., there appear to be some discrepancy in the weapon which the assailants were holding.

The charge-sheet allege that Akshay i.e. Accused no.3 was armed with lokhandi tocha (iron rod) and the basis of this version is statement of Shobha. Therefore, an attempt is made to canvass that if Shobha arrived at the spot, when the incident was over, the prosecution case must fall to the ground.

I do not think that this argument is available to the learned counsel, as from the charge-sheet, the presence of the Applicant Akshay on the spot and his participation in the assault has clearly surfaced though there is some discrepancy about the weapon which he was holding.

The deceased was assaulted by all the accused persons collectively. Mere discrepancy in the weapons which the assailants were holding, is not sufficient at this stage to absolve the Applicant Akshay as he will have to face the trial.

12] As far as Applicant Ashish is concerned, he attempted to take benefit of CCTV footage which is produced by the wife of the accused himself to show his presence in premises of a Trust. Reliance is placed on the statement of one Rajbahaddur Rami Chand recorded on 22.09.2022 and on the basis of pen drive which the wife of the accused produced, the witness makes a statement that Ashish was present in his Vighnaharta Charitable Trust trust and playing cards. He also makes a statement that from the year 2018 the Trust is shut down.

This statement do not take the case of this Applicant any further

as the statement is recorded after a lapse of 5 years of the incident and the veracity of this statement needs to be decided at the time of trial.

Furthermore, it is the wife of the Applicant Aashish Gurav, who has produced the pen drive, by stating that she had transferred it into her laptop and handed over to the police. But for some reason, she could not hand over the said evidence to the police and subsequently pen drive was lost by her.

In any case, her version cannot be accepted as a gospel truth particularly when the presence of the applicant on the spot and his participation in the assault is fortified by the complainant as well as other witnesses, including Shobha.

The same analogy which is applicable to the case of Akshay is also be applicable to the case of Aashish.

The contradictions and discrepancies in the case of prosecution which is attempted to be highlighted will ultimately have to be proved during the course of trial.

Prima-facie the presence of both the applicants on the spot has surfaced on record through the charge-sheet and even their role as assailants is not doubtful.

In the wake of above, Applications are rejected.

[BHARATI DANGRE, J]