

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1814 OF 2022

Sumit Raghunath Jamdar, Age 27 years,
Occ.Agriculture, R/o.Jamdar Galli,
Indapur, Dist.Pune, presently lodged in
Pune Jail.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Aabad Ponda, Senior Advocate, with Mr.Ritesh Thobde i/by
Mr.Sagar Tambe, Advocate for applicant.
Mr.Niranjan Mundargi i/by Mr.Rupesh Zade, Advocate for intervenor.
Mr.M.G.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th October 2022

PC :

1. This is an application for bail in C.R No.1016 of 2018 registered with Indapur Police Station for offences under Sections 302, 307, 120-B, 341, 143, 147, 148, 149, 506 of Indian Penal Code. The applicant was arrested on 16th December 2018.

2. The FIR was registered at the instance of Pravin Dattatraya Shelar on 9th December 2018 wherein it is stated that on account of previous incident and considering the fact that one Somnath Chavan was assaulted and Rs.10 lakh were spent towards medical expenses, threats were issued by applicant and other accused to the deceased. According to the complainant, on 9th December 2018 at about 6 to 6.30 p.m he received call from Javed Ahmed Shaikh that Sumit Raghunath Jamdar and 4 to 5 unknown persons came behind him

from vehicle, intercepted their vehicle and assaulted Javed Shaikh and Balu. The applicant Sumit was allegedly armed with sharp weapon and he gave blows on the head of Balu and Javed Shaikh. The complainant reached the spot and found Balu in injured condition. The information provided by Javed Shaikh was that Sumit and all his associates had assaulted with weapons to Balu. It is evident from the FIR that Javed Shaikh and Balu were assaulted by the accused. Investigation proceeded. Statement of Javed Shaikh was recorded on 19th December 2018. In the said statement he has stated that on 9th December 2018 while the deceased Balu and he was travelling on vehicle, the accused Sumit Jamdar, Rahul Jamdar, Nilesh Bansude, Kiran Shinde and two unknown persons intercepted their vehicle and got down from the vehicle. Driver Nitin Jamdar did not alight from the vehicle. Sumit Jamdar was armed with axe. Rahul, Balu and Nilesh Bansude were armed with sickle. Two unknown persons were armed with sickle and wooden log. Sumit Jamdar and Nilesh Bansude assaulted Balu on his head with axe and sickle. Someone also assaulted the witness on his head. Sumit Jamdar and Nilesh Bansude assaulted Balu. He was unconscious. The accused fled from the place of incident. He gave information to brother of Balu about the incident. The said witness and Balu were taken to hospital. Balu was declared dead. Statement of Javed Shaikh u/s.164 of Cr.PC was recorded on 20th December 2018. In the said statement he has stated that Sumit Jamdar, Rahul Jamdar, Nilesh Bansude, Kiran Shinde and unknown persons got down from the vehicle. They were armed with weapons. Sumit Jamdar and Nilesh Bansude assaulted Balu by axe. He was also assaulted by them. There is variation in respect to the weapon used in assault upon Balu by Sumit Jamdar and Nilesh Bansude.

3. Statement of Shivaji Jadhav who is eye witness was recorded on 20th December 2018. Shivaji Suryawanshi who is also eye witness was allegedly passer by. His statement was recorded on 19th December 2018. Investigation is completed and charge sheet is filed.

4. Learned Senior Advocate Mr.Ponda submitted as follows :

(a) There is variation in the information provided to the first informant by Javed Shaikh and his statement recorded on 19th December 2018;

(b) There is inordinate delay in recording statement of Javed Shaikh. There is no explanation for delay in recording her statement;

(c) As per information provided by Javed Shaikh to the first informant (as reflected in FIR), all the persons assaulted deceased Balu, whereas in the version appearing in the statement dated 19th December 2018 a specific role of assault is attributed to Sumit Jamdar and Nilesh Bansude;

(d) According to the complainant information was provided by Javed Shaikh immediately after the incident. Thus, he was in a position to talk. However, there is no explanation and there is nothing on record to indicate as to why statement of Javed Shaikh was recorded immediately;

(e) Statements of eye witnesses were recorded on 19th December 2018 and 20th December 2018. There is no explanation for delay in recording their statements;

(f) Shivaji Suryavanshi is purportedly the eye witness. He was working with Balu Shelar. Shivaji Jadhav was a passer by and there is no reason why he did not come forward to record his statement

immediately;

(g) All the accused except Nilesh Bansude who were allegedly the assailants as per version of complainant as per information received from Javed Shaikh and those who are named in the statement of Javed Shaikh and the eye witnesses, are on bail. Benefit of bail is granted to them on the basis of the fact that statement of injured Javed Shaikh and two eye witnesses, do not attribute role of assault to them. If such benefit of variation in version can be given to them on the basis of statement of Javed Shaikh and other witnesses, the applicant is also entitled for bail;

(h) The applicant is in custody for a period of four years;

(i) Recovery of clothes and weapons were allegedly made on 30th December 2018. The articles were allegedly thrown from the bridge in the river passing from below the bridge. The articles were not sealed.

5. Learned APP submitted that there are eye witnesses to the incident. Role of assault has been attributed to the applicant. The applicant was armed with weapon. Merely on the ground that statements were recorded belatedly no benefit should be given to the applicant. There is recovery of weapon and blood stained clothes at the instance of applicant. The statement of injured Javed Shaikh is recorded u/s.164 of Cr.PC. There is motive for committing crime.

6. Mr.Mundargi appearing for intervenor-complainant submits that Javed Shaikh was in injured condition and merely on the information provided to the complainant that Balu and he himself were assaulted by the applicant and others, no benefit should be given to the applicant. The statement of Javed Shaikh clearly attributes role of assault. Statements of two witnesses corroborates

the version of Javed Shaikh. Delay in recording statements is not the ground for bail. Statement of injured is recorded u/s.164 of Cr.P.C. Post mortem report refers to the injuries suffered by deceased which corresponds to the weapon used by the applicant in commission of crime.

7. Undisputedly the applicant is in custody for a period of four years. There is no progress in trial. The case of prosecution is that there is motive for committing crime. The case proceeds on the version of complainant reflected in FIR which is based on the information provided by Javed Shaikh (injured) about incident. The first informant had stated that Javed Shaikh had informed him that Sumit Jamdar and other persons had assaulted Balu with sharp weapons. Javed Shaikh also informed that he is also assaulted by the accused. Thus, based on the information of Javed Shaikh, the FIR was recorded and investigation proceeded. Statement of Javed Shaikh is obviously vital since he is injured eye witness. However, his statement was recorded on 19th December 2018. There is no explanation for recording his statement belatedly. The fact he gave information to complainant indicate that he was in position to talk. Javed Shaikh has stated that he provided information to the first informant. His statement does not indicate that he was not in a position to give statement immediately after incident. There is no material on record to show that he was handicapped in giving statement to police after incident. Although information provided by Javed was that Balu was assaulted by Sumit and other unknown persons, in his statement he named the persons who were armed with weapons. On the ground that role of assault is attributed to Sumit Jamdar, Nilesh Bansude, and relying on statement of Javed

and eye witnesses, bail has been granted to other co-accused. It is also pertinent to note that statements of other two witnesses were recorded on 19th December 2018 and 20th December 2018. As stated above, one of them was working with deceased and other one was passer by. If they had seen incident, it is not clear why their statements were recorded after the statement of Javed. Considering factual aspects as above, bail can be granted to applicant on certain conditions.

ORDER

- (i) Bail Application is allowed and disposed off;
- (ii) The applicant is directed to be released on bail in connection with C.R No.1016 of 2018 registered with Indapur Police Station, District Pune, on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for eight weeks in lieu of sureties;
- (iv) The applicant shall not contact injured or any other witnesses and shall not tamper with evidence;
- (v) The applicant shall report Indapur Police Station once in a month on every first Saturday of the month between 11 am and 1 pm till further orders;
- (vi) In the event of breach of any condition, the prosecution will be at liberty to seek cancellation of bail.

(PRAKASH D. NAIK, J.)