

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

CRIMINAL BAIL APPLICATION NO. 3472 OF 2021

Akash @ Vaman Prakash Gurav ..Applicant
Vs.
The State of Maharashtra ..Respondent

Mr. Satyavrat Joshi, for the Applicant.
Mr. S. R. Agarkar, APP for the Respondent / State.

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**CORAM : C.V. BHADANG, J.
DATE : 2 FEBRUARY 2022
(Through Video Conferencing)**

P.C.

. By this Application, the Applicant, who has been chargesheeted for the offence punishable under Section 302, 307, 452, 143, 144, 147, 148, 149, 323, 504 and 506(II) of IPC and Section 135 of the Maharashtra Police Act, arising out of Crime No.54/2020 of Police Station Vishrambaug, District Sangli, is seeking bail.

2. The prosecution case as disclosed from the Complaint lodged by Mahesh alias Shashikant Kulloli is that, informant had old enmity with the present Applicant Akash alias Vaman Prakash Gurav. Deceased Akash Shiryagopal is the friend of first informant. On 21

February 2020, the first informant and the deceased had gone to the house of the deceased, as he was alone at the house. They had taken dinner at about 10.00 p.m. when it is said that the present Applicant alongwith co-accused had trespassed into the room where the deceased and the first informant were sleeping and the deceased Akash Shiryagopal was assaulted by *bamboo* by the present Applicant. The co-accused are alleged to have assaulted both of them by PVC pipe, wooden stick, bricks and stones. In the incident, the first informant had also received injuries. The assailants after dragging both of them in the room where the deceased was residing, had left the spot. On the following day, both of them were taken to the hospital where Akash Shiryagopal was declared dead on arrival. On the basis of the complaint dated 22 February 2020, lodged by Mahesh alias Shashikant Kulloli, offence came to be registered and after investigation, the chargesheet is filed.

3. I have heard Mr. Satyavrat Joshi, the learned counsel for the Applicant and Mr. S. R. Agarkar, learned APP for the Respondent – State. With the assistance of the learned counsel for the parties, I have gone through the record.

4. It is submitted by the learned counsel for the Applicant that the co-accused Umesh Kamble, Gorakhnath alias Gourav Khandagale, Keshav Surgond, Mahesh alias Kumar Kamble,

Dharmesh alias Dharma Kamble, Sambaji Kamble and Manohar Kamble have been released on bail by the learned Sessions Court. It is submitted that the learned Sessions Judge has denied parity to the Applicant on the ground that there is specific role attributed to the Applicant of an assault on the deceased by a *bamboo*. It is submitted that there is no recovery from the present Applicant and the PVC pipe etc. were recovered from the spot. He also pointed out that there is complaint lodged by co-accused Vinayak Kamble against unknown persons about an incident which has happened at about 9.00 a.m. on 21 February 2020. It is submitted that the intention of an assault is not quite clear as the present Applicant Akash alias Vaman Prakash Gurav was allegedly having enmity with the first informant Mahesh alias Shashikant Kulloli and thus, there is no reason why Akash Shiryagopal who was the friend of Mahesh Kulloli was assaulted. It is submitted that in any case, the assault is not as such as to infer an intention to commit murder.

5. Learned APP has strenuously urged that there are as many as 35 external injuries found on the deceased apart from haemotoma on the head. It is submitted that all the accused persons have formed an unlawful assembly and had trespassed into the house of the deceased and assaulted the deceased as well as the first informant brutally, resulting into death of Akash Shiryagopal. It is submitted that parity cannot be claimed and has rightly been denied as there is

no specific role attributed to the Accused who were released on bail. Learned APP has placed reliance on the observations of the learned Sessions Judge where the claim of parity as well as submissions based on the filing of the complaint by Vinayak Kamble have been dealt with.

6. I have given my anxious consideration to the rival circumstances and the submissions made. It appears that the chargesheet names in all 10 Accused, apart from one unknown assailant. Co-accused Umesh Kamble, Gorakhnath Khandagale, Keshav Surgond, Mahesh Kamble, Dharmesh Kamble, Sambaji Kamble and Manohar Kamble have been released on bail by the learned Sessions Court. *Prima facie*, from the complaint lodged by Mahesh alias Shashikant Kulloli, it appears that there was an old enmity between the Applicant and the first informant Mahesh alias Shashikant Kulloli dating back to about 9 to 10 years prior to the date of incident. At least, *prima facie*, at this stage, it is not quite clear as to why although there is enmity between the Applicant and the first informant, Akash Shiryagopal who was friend of the first informant was assaulted and was done to death.

7. I have also gone through the order passed by the learned Sessions Judge granting bail to the co-accused. The fact remains that in the context of the fact that there was an unlawful assembly

formed with the common object, all the participants and the members who were part of the unlawful assembly would be equally responsible. Thus, in my considered view, only because allegation against the Applicant is of an assault by bamboo, his role cannot be distinguished. It appears that after the assault, both the first informant and the deceased were left in their house and the assailants had fled. *Prima facie*, there is a serious doubt whether there was an intention to cause death, that too of Akash Shiryagopal who was a mere friend of the first informant who had enmity with the Applicant. The investigation in the offence is complete and the chargesheet is filed. There is no recovery of any weapon from the person of the Applicant or at his instance, under Section 27 of the Evidence Act. The Applicant is in custody since 22 February 2020. Considering the over all circumstances, the following order is passed-

ORDER

- (i) The Applicant be released on bail, on executing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount.
- (ii) The Applicant shall undertake to remain present before the learned Sessions Judge, during the course of trial.
- (iii) The Applicant shall report to Sangli City Police Station, once in a month and shall not enter the

jurisdiction of the Vishrambaug Police Station, except for attending the trial.

(iv) The Applicant shall not make any attempt to directly or indirectly contact or influence the prosecution witnesses and shall not otherwise tamper with the prosecution evidence.

(v) Bail before the learned Sessions Judge.

(vi) The Criminal Application is disposed of, in the aforesaid terms.

C.V. BHADANG, J.