

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

CRIMINAL BAIL APPLICATION NO. 4192 OF 2021

Rohit @ Babu B. Balkawade	...Applicant
Versus	
The State of Maharashtra	...Respondent

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Mr. Ashok P. Mundargi, Senior Advocate i/by Mr. Rohan N. Hogle,
Advocate for the Applicant.

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

CORAM : PRAKASH D. NAIK, J.

DATE : 11th OCTOBER, 2022.

P.C.

1. The applicant has applied for bail in C.R. No.44 of 2021 registered with Paud Police Station, Dist. Pune for offence under Sections 307, 143, 147, 149, 323, 326, 504 and 506 of Indian Penal Code (for short 'IPC'). The First Information Report (for short 'FIR') was registered on 10th February, 2021.

2. The case of the prosecution is that on 10th February, 2021. The first informant had been to petrol pump and at that time Shankar Akhade, Shrivardhan Tikone and Hrushikesh Dhepe had abused him due to his association with Akshay Kadu. The first informant informed about the said incident to his friend Akshay Kadu and Rutik Yevale. He also visited Paud Police Station and lodged the complaint.

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On the same day in the afternoon, the first informant and his friends Gaurav Dhanve, Sameer Barmukh, Rihan Shaikh, Vishal Shirke, Akshay Kadu, Akash Shinde, Tejas Bangude, Rutik Yevale and Omkar Shedge were playing cricket. Shankar Akhade gave a call on cell phone of Akshay Kadu and told him to come in front of his house. The first informant, Gaurav Dhanve, Sameer Barmukh, Rihan Shaikh, Vishal Shirke, Akshay Kadu, Akash Shinde, Tejas Bangude and Rutik Yevale gathered in front of house of Shankar Akhade. Maruti Akhade, Shankar Akhade and Hrishikesh Dhepe were present at the spot. The first informant and his friends had talk about the incident occurred at the petrol pump. There was exchange of words between both the sides. The first informant and his friends were abused. Shirya @ Vaibhav Waghchaure instigated his associates. Dada Tikone, Akash Dabhade, Maruti Akhade came down from the terrace with weapon like sword, sickle and assaulted the injured persons. Dada Tikone had assaulted Akshay Kadu with sword on his hand. Akash Dabhade had assaulted Tejas Bangude on his neck with blow of weapon. Dada Tikone and Akash Dabhade assaulted Akash Dilip Shinde with weapons. He tried to shield the attack with his hands which has resulted in amputation of his hands. Maruti Akhade had assaulted Tejas Bangude with sickle on hand and head. Shankar Akhade and others assaulted Akshay Kadu, Akash

Shinde and Tejas Bangude. The injured persons were taken to hospital. FIR was registered. Statement of witnesses were recorded. Applicant was implicated as conspirator in crime. Charge-sheet was filed.

3. The applicant preferred an application for bail before the Court of Sessions at Pune. The Application was rejected by order dated 8th October, 2021.

4. Senior Advocate Mr. Mundargi appearing for applicant submitted that there is no evidence to connect the applicant with crime. The applicant was not present at the spot of incident. He has not participated in the assault. The theory of conspiracy is afterthought. Only on the basis of CDR and the calls *inter se* with the co-accused, the applicant cannot be implicated in this crime. The co-accused were known to the applicant and assuming that there are calls between them, it cannot be held as strong circumstance to show involvement of the applicant in the crime. The statements of the witnesses referring to conspiracy were recorded belatedly. Their version is concocted. Investigation is completed and the charge-sheet is filed. Co accused Sunny Chavan was granted bail by Sessions Court, Pune vide order dated 13th September, 2022. Accused No.6 Hrihikesh Dhepe is granted bail by Sessions Court on

28th July, 2022. The witnesses have improved their version in statements recorded under Section 164 of Cr.P.C. Further detention of the application is not necessary.

5. Learned APP submitted that the offence is of serious nature. The attack was accomplished at the instance of the applicant. There is strong evidence to show the involvement of the applicant. Statement of witnesses support the theory of conspiracy. The complainant was threatened by the applicant, after the registration of FIR by pointing revolver. At the time of arrest pistol was recovered from the applicant. Four cases were registered against the applicant in the past vide C.R. No.97 of 2016 for offences under Sections 352, 143, 147, 148, 149, 109, 452, 427, 504 and 506 of IPC with Vadgaon Maval Police Station, C.R. No.346 of 2017 registered with Paud Police Station for offence under Sections 326, 324, 323, 504, 506, 34 of IPC, C.R. No. 214 of 2018 registered with Paud Police Station Pune, Rural for offences under Sections 307, 324, 147, 148, 149 of IPC and C.R. No.93 of 2021 registered with Paud Police Station Pune, Rural for offences under Section 504 and 506 of IPC. Statements of witnesses were recorded under Section 164 of Cr.P.C. Akash Shinde had suffered serious injuries. His hands were amputated due to blow of weapon.

6. The incident had occurred on 10th February, 2021 at about 5:00 p.m. It was sequel to the incident which had occurred on the same day at about 12:30 p.m. at the petrol pump. The accused named in the FIR had allegedly assaulted the injured persons with weapons as depicted by the first informant.

7. The applicant is undisputedly not the assailant nor present at the scene of offence. The applicant is not named as an accused in the FIR. Statement of first informant and other eye witnesses including injured persons were recorded. No overtact of assault has been attributed to the applicant. Statement of first informant was recorded on 10th February, 2021, 11th February, 2021 and 9th April, 2021. In FIR role of assault is attributed to other accused. The FIR proceeds with the fact that there was incident of threat to first informant. He informed about it to Akash Kadu. Thereafter the injured persons and accused met allegedly for resolving dispute, when the incident of assault had occurred. FIR and statement of complainant dated 11th February, 2021 does not refer to name of applicant and no role of whatsoever nature is attributed to the applicant. In the statement dated 9th April, 2021 for the first time the complainant has alleged that applicant has conspired with assailants to commit the act of assault. The first informant has

alleged that the applicant is a conspirator in the crime and instigated the other accused to execute the assault. Thus, the statement of first informant involving the applicant as conspirator was recorded after a period of about two months from the date of incident. Statement of injured Akshay Kadu was recorded on 22nd February, 2021. His supplementary statement was recorded on 9th April, 2021. The charge-sheet does not mention why the first statement of said witness was recorded on 22nd February, 2021. It is not clear whether the said witness was not in a position to give the statement for all these days on account of injuries suffered by him. He stated that the applicant and his friend Dadya Tikone had attacked one Dasharat Chavan on account of enmity in the year 2018. FIR was lodged by Dashrath Chavan. There was quarrel between Dadya Tikone, Shankar Akhade, Hurishikesh Dhepe and first informant in January, 2021. The version of this witness does not refer to possible motive for the applicant to assault the injured persons. Supplementary statement of Akshay Kadu was recorded on 9th April, 2021. Even this statement does not refer to conspiracy by the applicant to orchestrate the attack. The statements of all the witnesses are identical. I have perused statements of Rutik Yewale, Riyan Shaikh, Samir Barmukh, Vishal Shirke, Gaurav Wanave, Tejas Bangude and other witnesses. The aforesaid persons claim to be eye witnesses to the incident.

They have referred to dispute between applicant, Dadya Tikone and Dashrath Chavan. The said incident does not indicate possible motive for applicant to conspire with co-accused to assault the witnesses. Statements of Salman Mulani and Zuber Shaikh were recorded on 23rd February, 2021. As per the version of Salman Mulani on 9th February, 2021, he saw Rohit Balkawade (Applicant) in front of the gate of his house alongwith Dadya Tikone, Hrishikesh Dhepe, Shankar Akhade, Akash Dabhade and Shirya Waghchaure with two to three unknown persons. The applicant was instructing them that some action is required to be taken against the associates of Mangya namely Samya, Chikya, Tejas, Saurabh and Akya Shinde. On 10th February, 2021, he saw Akash Dabhade and Hrushikesh Dhepe leaving the house of Rohit Balkawade and Akash Dabhade was seen carrying sickles in bag. Zuber Shamim Shaikh had referred to similar facts. Both of them were together. Although they witnessed the aforesaid incidents on 9th February, 2021 and 10th February, 2021, they were silent till 23rd February, 2021, although the incident of assault had taken place on 10th February, 2021. Their version is *prima facie* doubtful. Investigation is completed and charge-sheet is filed. The reliance of CDR is weak piece of evidence. It appears section to invoke provisions of MCOC Act was rejected. Statements of witnesses were recorded under Section 164 of Cr.P.C.

Complainant Saurabh Bangude in his statement under Section 164 Cr.P.C. dated 9th June, 2021 has stated that on 7th April, 2021 accused Babu Balkavade threatened him by pointing pistol to withdraw case. There is no reference to this incident in his supplementary statement dated 9th April, 2021. It is alleged that applicant was arrested 8th April, 2021 and at that time he was found in possession of pistol. C.R. No.93 of 2021 was registered against applicant under Sections 504, 506, 34 of IPC. The applicant was granted bail in that case on 25th August, 2021. Statement of witness Akshay Kadu was recorded under Section 164 of Cr.P.C. on 9th June, 2021. This witness for the first time stated that the assailants had stated that they are acting on instructions of Babu Balkavade. Akash Shinde in his statement under Section 164 of Cr.P.C. for the first time stated Dada Tikone was taking instructions from Rohit Balkavade on phone during the assault. Similarly Tejas Bangude has improved his version in his statement dated 9th June, 2021 recorded under Section 164 of Cr.P.C.

8. Hrishikesh Dhepe was granted bail by the Court of Sessions vide order dated 28th July, 2022. Sunny Chavan was granted bail vide order dated 13th September, 2022. Injured Akash Kadu had alleged that Sunny Chavan was armed with weapon and Hrishikesh Dhepe was also armed with axe and participated in assault. Tejas Bangude has also attributed role to them. Axe was recovered from

Hrishikesh Dhepe. While granting bail to Hrishikesh Dhepe the Sessions Court has observed that, the statements of witnesses are contradictory. While granting bail to Sunny chavan it was observed that role attributed to him was of assault by fist/kicks. Considering the role of applicant and the aforesaid facts, further detention of applicant is not necessary. Bail can be granted on certain conditions.

ORDER

- i. Criminal Bail Application is allowed.
- ii. The applicant is directed to be released on bail in connection with C.R. No.44 of 2021 registered with Paud Police Station, District Pune on executing P.R. 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 a period of eight weeks;
- iv. The applicant shall not tamper with evidence;
- v. The applicant shall report Paud Police Station once in a month on every first Saturday between 11 a.m. and 1 p.m. till further orders;
- vi. The applicant shall stay out of jurisdiction of Paud Police Station for a period of six months.

[PRAKASH D. NAIK, J.]