

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4353 OF 2021

Akshay Rajendra Yadav	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.M.B. Shirsat, for the Applicant.

Mr.S.V. Gavand, APP for the State.

PSI Shirdhankar, Andheri Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 11th OCTOBER, 2022.

P.C.

1] Applicant is charged for the offence under Section 307, 326, 324, 506, 143, 145, 147, 148, 149 of the Indian Penal Code.

On completion of investigation, charge-sheet has been filed against four accused persons. The Applicant is charged as accused No.1. The charge-sheet accuse four persons of causing injuries to one Jatin Desai by means of iron rod, liquor bottle and fist and blows, in an attempt to kill him.

2] The prosecution case surface through the statement of Tara Desai-mother of Jatin, who has referred to the Applicant as a person residing in their building and engaged to a girl residing in the same building, but he was suspecting that her son Jatin was having an affair with the said girl and this was the cause of discord between them.

Opara On 09.05.2021 Akshay Yadav and his friend Rupesh Vishwakarma had abused the son of the complainant by name Manish and threatened him.

On 06.07.2021 at 1.30 p.m. she was informed that her son Jatin was being assaulted by 3-4 persons in front of Manish Medical on Eastern Express highway. When she rushed to the spot, she found Akshay alongwith his friend Rupesh Vishwakarma, Ritik Sharma, Pakya and three-four other associates assaulting Jatin and his friend Imran, by iron rod, fist and blows.

Rupesh Vishwakarma is also alleged to have picked up a brick and assaulted Imran on his head. When she went to rescue them, Akshay is said to have picked up a beer bottle and hit Jatin in his head and broke the bottle. When she attempted to shield Jatin, it is alleged that Akshay picked up the broken bottle and rushed towards her and caused injuries to her hand and thereafter Ritik Sharma and Pakya held Jatin from behind and Akshay is alleged to have assaulted Jatin on his chest by the broken beer bottle and also on his face. Imran is also alleged to have been assaulted by the said bottle by Akshay.

3] During investigation, the spot panchanama is prepared and compiled in the charge-sheet.

The statement of injured Jatin is also recorded who refer to the previous enmity with Akshay and narrate the incident which took place on 06.07.2021. He state that at around 1.30 p.m. Akshay Yadav, Suresh Khanapure, Rutesh Fvishwakarma, Rutik Sharma and Prakash Shonoli @ Pakya were standing at a spot and he accompanied by his friend Imran started marching towards them. He state that he picked up a paver block and Imran picked up a bamboo and they reached near the persons, who were standing under the bridge and he raised the

paver block to assault Akshay. But all of a sudden he was hit by something on his head and he fell to the ground and was assaulted by fist and blows and something, but since he had fallen down, he did not realize, who had actually assaulted him and by what means he was assaulted.

Similarly statement of Imran, another injured is also recorded, where he refer collective role to 4-5 persons who were present there, by specifically naming them as Akshay Yadav, Rupesh Vishwakarma, Ritik Sharma, Pakya and it is alleged that the assault was mounted by glass bottle, bamboo and brick. He also state that the complainant sustained injury on her index finger.

4] The incident is recorded in the CCTV camera, which was fitted outside the medical store and the recording is obtained through a Panchanama drawn on 17.07.2021. The same, however, differs from the version of the complainant.

In the CCTV footage it can be seen that Suresh Khanapure is the main assailant and Jatin and Imran are seen arriving at the spot; Imran holding Bamboo and Jatin holding something in hand. Since they arrived, Jatin is seen pulling shirt collar of Akshay and hitting him by something, which was in his hand, on his head. Suresh Khanapure is seen picking up a rod and Ritesh Vishwakarma is seen assaulting Jatin by hands. Further, Suresh Khanapure, Akshay Yadav, Ritesh Vishwakarma and Ritik @ Novel Navin Sharma are seen assaulting Jatin and his friend Imran by hands and kicks and an attempt is made by Prakash @ Pakya to snatch the rod from Suresh Khanapure, but he was unsuccessful. In the meantime, Tara is seen arriving at the spot and Suresh Khanapure is seen assaulting the two injured who are lying on the ground, by means of rod in his hand.

One Amir Shaikh and Jatin's mother intervened and Prakash @ Pakya is seen standing on the spot. The accused persons, thereafter, are seen leaving the spot.

5] The injury certificate of Jatin placed on record refer to incised wound on parietal region, temporal area and on the chest, interior portion. It also reflect to 3 stab wounds and five injuries sustained by him are referred to as grievous injuries.

As far as Tara is concerned, she has sustained incised wound circumferential around the base of right little finger.

Imran has also sustained one incised wound on right side of face and another near ear, as well as one stab wound.

6] Looking to the nature of injuries sustained by the injured, which are in the nature of incised wounds, when the Applicant cannot be said to be author of the injuries, as the CCTV footage has recorded that he has assaulted by fist and blows.

As far as that portion of the version of the complainant to the effect that the Applicant assaulted her by means of broken bottle is concerned, the CCTV footage do not reflect any such happening.

7] In any case, the version of the prosecution will have to be tested in the light of CCTV footage and statements of witnesses who had witnessed the entire incident. The role attributed to the present Applicant which has surfaced through the charge sheet is of assaulting the injured by hands and kicks and therefore, the injuries sustained by Jatin cannot be said to be prima-facie authored by him.

8] The Applicant is incarcerated for more than one year with charge

not being framed till date. Hence, the applicant deserve to be released on bail as he is a young lad aged 25 years, subject to condition that he alongwith his family shall remove themselves from Andheri (East) area and rehabilitate outside that area and shall not enter in the jurisdiction of Andheri (East) except for marking his attendance. He will face the consequences of accusations faced by him on being charged of sharing common intention with other assailants, particularly when his presence at the spot and participation in the crime has not been disputed.

9] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which he is charged, shall not in any manner be influenced by the above order.

Hence, the following order.

ORDER

- (a) Application is allowed.
- (b) Applicant – Akshay Rajendra Yadav shall be released on bail in connection with C.R.No.855 of 2021 registered at Andheri Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The applicant shall report to the concerned Police Station on first Monday of every month between 04.00 p.m. to 06.00 pm till framing of charge.
- (d) The Applicant alongwith his family shall remove himself from Andheri (East) area and rehabilitate outside that area and shall not enter in the jurisdiction of Andheri East except for marking his attendance as directed above.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(f) The Applicant shall regularly attend trial, on every date, unless exempted.

[BHARATI DANGRE, J]