

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

CRIMINAL APPEAL NO.1043 OF 2021

Akshay @ Sonya Anant Yewale Appellant

versus

State of Maharashtra & Anr. ... Respondents

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- Mr. Amol A. Patankar, Advocate for Appellant .
- Mr. Prasad Kulkarni, Appointed Advocate for Respondent No.2.
- Mr. Y. M. Nakhwa, APP for State/Respondent.

**CORAM : S. S. SHINDE &
SARANG V. KOTWAL, JJ.**
DATE : 11th APRIL, 2022.

P.C. :

1. Leave to amend granted. The amendment shall be carried out forthwith.

2. The Appellant has filed this Appeal for his bail in connection with C.R.No.142 of 2021 registered with Ghodegaon police station, Pune, under sections 302, 326, 325, 324, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, under section

135 of the Maharashtra Police Act and 3(2)(v), 3(2)(va) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act. The Additional Sessions Judge, Khed, Rejgurunagar had rejected the Appellant's application for bail. Hence this Appeal under the provisions of the said Act.

3. Heard Mr. Amol A. Patankar, learned counsel for the Applicant, Mr. Prasad Kulkarni, learned counsel for Respondent No.2 and Mr. Y. M. Nakhwa, learned APP for the State.

4. The FIR is based on the statement/dying declaration given by the deceased himself. The FIR was lodged on 28/06/2021 by the first informant i.e. the deceased Kailas @ Babu Dashrath Gengje. He has stated that on 27/06/2021 at about 06.00 p.m. he had gone to the construction site of house of his friend Vasant Ubhe. After some time Omkar Anil Gholap, Suraj Gholap and Anikent Gholap along with four persons who had covered their faces came near them at about 08.00 p.m. Omkar abused him and gave blows with sickle on his head,

knees, ear, thigh etc. Suraj and Aniket assaulted him with iron rod on his left hand, back, left leg etc. The four other assailants who had accompanied them and who had covered their faces assaulted him with iron rods. The other persons who were present at the spot rescued him. They informed the first informant/deceased Kailas's brother Yuvraj. In the meanwhile the assailants ran away. Kailas was initially taken to Rural Hospital, Ghodegaon and then to Y. C. M. Hospital. His statement was recorded in the hospital. Based on this, the FIR was lodged. The Appellant was arrested on 06/07/2021 and since then he is in custody. The investigation is over and the charge-sheet is filed.

5. Learned counsel for the Appellant submitted that the allegations in FIR are not true as revealed in the investigation itself. The report u/s 169 of Cr.P.C. was filed in favour of Suraj Gholap and Aniket Gholap, who are named in the FIR. He further submitted that in none of the statements of the eyewitnesses, the Appellant is named. Though the allegations

are that they were unknown assailants, even after arrest of the Appellant, no efforts were made to put him in test identification parade. There is no recovery at his instance. Learned counsel submitted that the Appellant therefore be released on bail.

6. Learned APP as well as learned counsel for Respondent No.2 submitted that though the Appellant is not named in the FIR, there were four other unknown persons and therefore his participation in the offence is indicated. They submitted that there is recovery of clothes from the sister of the Appellant which is an incriminating piece of evidence.

7. We have considered these submission. Apart from the FIR, there are statements of 3 other eyewitnesses Vasant Ubhe, Shrikant Gengje and Pavan Gengje. Their statements are similar. Their supplementary statements are also recorded. Vasant Ubhe has described the incident. He has stated that Omkar Gholap had assaulted Kailas with sickle at various parts of the body as mentioned in the FIR. There were six unknown persons

accompanying him who had assaulted Kailas with iron rods all over the body. Similar statements are given by other eyewitnesses. In supplementary statements they have mentioned that they came to know that the Appellant was one of the accused who were arrested by the police. Post mortem notes show that there were 12 injuries including some sutured wounds. The cause of death was 'Head injury with polytrauma'.

8. Though the deceased had suffered many injuries, the question is whether the Appellant can be released on bail based on the material available at this stage. As mentioned earlier the Appellant is not named by any of the eyewitnesses including the deceased himself. No test identification parade is held to enable the eyewitnesses to identify the Appellant. There is no recovery at the instance of Appellant. The evidentiary value and the seizure of clothes from the sister of the Appellant hardly carries any weightage. Thus, at this stage, there is hardly any material against the Appellant. Therefore the Appellant deserves to be released on bail.

ORDER

- (i) The Appeal is allowed.
- (ii) The Appellant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iii) Appeal stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

(S. S. SHINDE, J.)