

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

CRIMINAL BAIL APPLICATION NO. 2712 OF 2022

Kunal Bhanudas Yadav ...Applicant
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
CRIMINAL BAIL APPLICATION NO. 2947 OF 2022**

Asha Dnyaneshwar Gole ...Applicant
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 4624 OF 2022
IN
CRIMINAL BAIL APPLICATION NO. 2947 OF 2022**

Omkar Prakash Pawar ...Applicant
vs.
The State of Maharashtra and Ors. ...Respondents

Mr. Satyavrat Joshi a/w Mr. Shubham Mhatre i/by Mr. Ramanik P. Pawar - Advocate for the Applicant in BA 2712 of 2022
Mithilesh Mishra i/by Gopal Bhosale - Advocate for the Applicant in BA 2947 of 2022.
Mr. Prithviraj S. Gole – Advocate for the Applicant (Complainant in IA 4624 of 2022)
Mr. Y. Y. Dabke - APP for the Respondent-State in BA 2712 of 2022
Mr. H. J. Dedhia – APP for the State in BA 2947 of 2022

CORAM : S. M. MODAK, J.

DATE : 06th JANUARY, 2023

P. C. :-

1. Heard learned Advocate Shri Satyavrat Joshi for the Accused No. 5 – Kunal (applicant in Bail Application No. 2712 of 2022) and learned Advocate Mithilesh Mishra for the Accused No. 7- Asha (applicant in Bail Application No. 2947 of 2022) and heard learned APP Shri Dedhia and Shri Dabke. Also heard learned Advocate for the Complainant.

2. They are praying for bail in connection with C.R. No. 159 of 2021 registered at Khandala Police Station on the complaint of one Omkar Prakash Pawar one of the injured. His father Prakash is also injured whereas his brother Prashant is dead. Initially, the offence was registered against the deceased-Prashant only. Whereas later on, it was revealed that it is not the Prashant who is responsible for the rash and negligent driving of the motor cycle and thereby causing his own death and injury to his father-Prakash and brother-Omkar, but it is disclosed that charge-sheeted accused persons are responsible for causing murder of Prashant and causing injury to those two persons.

3. Initially, the Police registered an offence under Sections

279, 304A, 337, 338 of the Indian Penal Code and under Section 184 of the Motor Vehicles Act, on 13/12/2021. It was on the complaint of first informant-Omkar. This is on the basis of the incident that took place on 12/12/2021 at 6.30 p.m. and the accident took place on the road in front of Viraj Hall within the limits of Pargaon Taluka Khandala, District Satara. The motor cycle was driven by the deceased-Prashant, whereas other two injured were pillion riders. Initially, the Police accepted his complaint and registered the offence as mentioned above. However, on the basis of the supplementary statement recorded of the first informant on 14/12/2021, the Police have converted that offence into Sections 302, 307, 326, 324, 347, 201, 120(b), 504 and 506 of the Indian Penal Code.

4. The first informant-Omkar has stated that in fact he and his father-Prakash and brother Prashant were called on different occasions by the accused-Prakash Yadav and all three were beaten by fiber sticks and wooden logs and during that assault Prashant died.

5. The first informant-Omkar is a relative of arrested accused-Vaishnavi Balkrishna Shinde. She is daughter of Maternal uncle Balkrishna of the first informant. The said Vaishnavi had love affair with a boy belonging to Muslim religion, resident of Pargaon.

It was disliked by the family of the first informant. That is why she was brought from her parents house and she stayed in the house of the first informant at village Anavadi, Tal. Wai, District Satara. There was complaint lodged with Khandala Police Station about missing of said Vaishnavi and on her own she stated to the Police that she had married with Muslim boy and thereafter, she started residing with her Maternal aunt i.e. Asha Gole (applicant in Bail Application No. 2947 of 2022

6. On this background, the Accused No. 1-Prakash Yadav called the first informant-Omkar in order to discuss the issue of Vaishnavi. The Shubham is her brother. Prakash-father of the first informant alongwith said Shubham first went to the Accused No. 1 at about 10 a.m. and thereafter, it was turn of the deceased-Prashant. He went there at 12.15 in the afternoon on the call of his father-Prakash. Thereafter, at 3.30 p.m., the first informant-Omkar was also called at Village Pargaon. After all three went there, thereafter, they were assaulted by the two sets of accused persons at different places.

7. The first informant and his father were taken through Eco car by accused No. 1 and was taken to room situated at distance

of 2 k.m. where accused Bandu Fauji(Accused No. 2), Gaurav Yadav (Accused No. 3) and two other unknown persons beat them. The reason was the first informant-Omkar, his father-Prakash and deceased-Prashant raped arrested accused-Vaishnavi. Thereafter, the first informant was dragged and brought in a room wherein his father-Prakash was kept. He was also seriously beaten.

8. Both were taken towards village Kesurdi in the Eco car. They noticed one car of a silver colour came from their backside. There were two unknown persons and deceased brother-Prashant in an injured condition in that car. From there deceased-Prashant was taken to Manasi hospital. Whereas the first informant-Omkar and his father-Prakash were taken to the Spandan Hospital, Khandala.

9. The incident does not stop there. Accused No. 1-Prakash Yadav informed to first informant's father-Prakash that his son-Prashant has expired and now it is for first informant's father-Prakash to inform their relatives that Prashant has expired in a Motor cycle accident at Pargaon and other two were injured in that accident. Under the fear, father-Prakash did that thing. Thereafter, the deceased in one car and these two injured in other car were taken to two agricultural fields and first informant-Omkar and his

father-Prakash were forced to admit that they have raped Vaishnavi and it was video recorded.

10. From there the first informant-Omkar was taken to the house of Asha Gole-applicant in Bail Application No. 2947 of 2022. He was again beaten there. Deceased-Prashant also brought there and he was also again beaten there. The first informant-Omkar was again told to call his uncle-Satish Pawar and they were taken to Surur Phata and there relatives were called. There relatives took the first informant and his father to Mission Hospital whereas the dead body was taken to post-mortem. There are certificates issued of first informant-Omkar dated 13/12/2021 issued by the Rural Hospital, Khandala and 27/12/2021 issued by the Willis F. Pierce, Memorial Hospital, Village - Wai. (page nos. 346 and 347). The reason mentioned on page 346 is assault. Whereas on page no. 347, the same reason is mentioned. Whereas we have got certificates of father-Prakash at page nos. 338 and 339. They both are issued by Willis F. Pierce, Memorial Hospital, Village - Wai. The reason mentioned is Road Traffic Accident and assault respectively.

11. On this background, the first informant has lodged the accidental death report. Whereas on the basis of the supplementary

statement, it was converted into Section 302 of the Indian Penal Code.

12. Accused-Kunal came to be arrested on 15/12/2021 and Applicant-Asha was arrested on 16/12/2021. The prosecution relied upon the following materials against Applicant-Kunal:-

- 1) He was identified by the first informant-Omkar and his father-Prakash.
- 2) Two fibre sticks were recovered at his instance.
- 3) There are statements of two witnesses by name Kalpesh Shinde dated 25/12/2021 at page 409 and of Ganesh Pawar dated 02/01/2022 at page no. 413.
- 4) There are CDRs belonging to the mobile of the accused-Kunal showing telephonic conversation with above the said two witnesses.
- 5) Applicant-Kunal has telephonically informed to these two witnesses that they have beaten Prashant.
- 6) There are supplementary statements recorded of father-Prakash on 09/02/2022 at page no. 393 and the first informant-Omkar dated 09/02/2022 at page no. 53.

13. Whereas against the Applicant-Asha, the prosecution relied upon the following materials:-

- (i) The statement recorded under Section 27 thereby showing the place wherein the conspiracy was hatched.

(ii) A part of the assault has taken place in her house and she has not taken any action

14. In addition to above, the prosecution also relied upon the seizure of the Hyundai Accent Car in which there were blood stains found at the backside of the seat and panchnama to that effect was prepared on 17/12/2021. They have also relied upon CCTV footage collected from the Spandan Hospital showing the presence of the some of the accused persons.

Submissions

15. Learned Advocate Shri Joshi submitted that the extra judicial confession is a weak piece of evidence and it is unbelievable that the first informant-Omkar and his father-Prakash even though admitted in the hospital on 12/12/2021 were under the fear of the accused persons till the time of lodging of the first complaint on 13/12/2021. In fact, when the first informant gave a complaint to Police he ought to have stated about the incident which took place according to him and which was informed to the Police on 14/12/2021. According to him, the role attributed to Applicant-Kunal is not major and even though he is released on bail the investigation is not going to hampered as charge sheet is already

filed. Alternatively, he also submitted that intention to commit murder cannot be attributed to them. Because the incident has happened at the spur of the moment and injured were taken to hospital by the accused only. It shows there bonafides and it is consistent with their innocence. He also submitted that in the CCTV footage collected from the Spandan hospital the present Applicant-Kunal (applicant in Bail Application No. 2712 of 2022) is not shown.

16. Learned APP Shri Dabke invited my attention to above said materials and opposed grant of bail. Even learned Advocate for the first informant invited my attention to above said material and he relied upon a judgment in the case of **Bhoopendra Singh Vs. State of Rajasthan and Anr.** decided by the Hon'ble Supreme Court on 29/10/2021.

17. Whereas learned Advocate for the Applicant-Asha (applicant in Bail Application No. 2947 of 2022) has submitted that she had played a very meager role and there is no active involvement and being a lady she is entitled for the bail. Learned APP as well as learned advocate for the first informant opposed prayer for grant of her bail.

18. Learned Advocate Shri Joshi differentiated facts of the

case of the **Bhoopendra Singh (supra)** According to him, even the Hon'ble Supreme Court has reversed the decision of the High Court in granting the bail. The facts were like that earlier the bail application was rejected on various occasions and it was granted by the High Court even though there were no change of circumstances.

19. So far as the Applicant-Asha is concerned, I am inclined to grant of bail to her. Even though a part of assault took place in her house, nothing from investigation papers were pointed out to me that in fact she did assaulted either of the three persons. She might have shown the place of the conspiracy in pursuance to the statement under Section 27 of the Indian Evidence Act, no statements are pointed out corroborating this fact that is to say either neighbour or passersby have seen the accused persons sitting in a room.

20. Considering the materials as referred against her she is entitled to release on bail.

21. It is true that initially the offence was Vechilur offence was registered. One can also certainly say that why the first informant has not disclosed to Police about the attack on them for the first time on 13/12/2021. Papers also discloses that first

informant was also taken to a village hospital on 13/12/2021 and he told history to the doctors. There is also spot panchnama recorded by the police on 13/12/2021 in support of case of accidental death. It also suggest certain signs of accident. That spot was situated at a place in front of Viraj Hall of Pune Satara highway. It was carried out on 13/12/2021. It is also true that there are statements of relatives of the injured who have collected them at village Vele/Surur Phata on 12/12/2021. Then also first informant has not disclosed about the assault till 14/12/2021. So on one hand we have got all these materials on the basis of which Applicant-Kunal can certainly raise doubts about the bonafides of the first informant.

22. Considering this, I have perused the investigation papers in the form of charge-sheet in order to ascertain whether they are materials corroborating the theory of Homicidal attack. Considering from that angle there are materials collected during investigation.

23. Learned Advocate Shri Joshi also invited my attention to the injuries noticed in post mortem report i.e. intracranial haemorrhage was cause of death. There may be certain lacunae in the materials collected against the Applicant. However, at this stage it is difficult to exercise the discretion in favour of the Applicant-

Kunal. The background of the incident is also important. During trial, the accused may argue that there was no intention to commit murder but at this stage that benefit cannot be given to them.

24. The witnesses are also from the same localities. It is important to note that they were beaten not only at one place, there are two places. Even first informant was threatened to call relatives and to inform them about false version of the incident. Even though the Applicant was not shown in the CCTV footage, the Accused visiting to the Spandan Hospital was a bonafide gesture or step taken in the design of threatening the witness cannot be opined at this stage. When such is a threat to the witnesses, it is difficult to grant bail to the Applicant-Kunal and there may be a threat to witnesses, if he released on bail. So Applicant-Kunal does not deserves bail. Hence it is rejected.

25. It is made clear that above said observations are my *prima-facie* observations and they are without prejudice to the rights of the parties and trial Court need not be influenced by that.

ORDER

- (i) Criminal bail Application No. 2947 of 2022 is allowed.

- (ii) The Applicant-Asha Gole arrested in connection with C.R. No. 159 of 2021 registered at Khandala Police Station, be released on bail on furnishing PR bond and surety bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The Applicant-Asha Gole shall not threaten the prosecution witness.
- (iv) The Applicant shall regularly attend the proceedings before the trial Court.

[S. M. MODAK, J.]