

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.2002 OF 2023
WITH
INTERIM APPLICATION NO.2728 OF 2023**

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Amol Sunil Dhamane ...Applicant
VS.
The State of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO.2001 OF 2023**

Nikhil Ananta Bhande ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Raju Suryawanshi, for the Applicant.
Mr. Y.M. Nakhwa, APP, for the Respondent/State.
Mr. Dilip Shinde, for the Applicant for the Intervener.
Mr. Mahadev Jadhav, PSI, Shahapur police station.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 17, 2024

P.C.:

1. Heard the learned counsel for the applicants and the learned
APP for the State.

2. The applicants who are arraigned in C.R. No. 348 of 2022
registered with Shahapur police station for the offences punishable
under sections 302, 307, 324, 323, 341, 143, 144, 148 and 149 of
the Indian Penal Code and section 37(1)(3) read with 135 of
Maharashtra Police Act, seek to be enlarged on bail.

3. Dinesh Khupse is the nephew of Dilip Khupse (the deceased). There was a dispute between the first informant's family and Kailash Shelke, the co-accused, as the later had falsely accused the informant's family of having committed theft.

4. On the 22nd August, 2022 at about 1.00 am the first informant noticed that a vehicle had stopped in front of the house of the first informant. The co-accused Kailash Shelke, Kaluram Baswant and Nikhil Bhande, the applicant, were found throwing iron rods in the tempo of the first informant. After noticing the first informant and the deceased, co-accused Kailash Shelke, Kaluram Baswant and applicant Nikhil Bhande fled away on the motor-cycle towards Doryache Pada, along with iron rods. The first informant and the deceased chased them.

5. The first informant alleges that when they reached near the house of Police Patil of the village, the applicant Amol Dhamane along with Yogesh Chavan and Jayesh Dukare and above named accused were standing thereat. They charged on the persons of the first informant and the deceased. The co-accused Kailash Shelke was armed with a chopper. Kaluram Baswant and applicant Nikhil Bhande had wooden logs. The applicant Amol Dhamane, co-accused

Yogesh Chavan and Jayesh Dukare caught hold of the deceased and assaulted him by means of fist and kick blows. The applicant Nikhil Bhande and the co-accused Kaluram Baswant gave blows by wooden sticks. The co-accused Kailash Shelke assaulted the deceased by means of chopper. As the deceased sustained bleeding injuries and alarms were raised, the applicants and the co-accused fled away.

6. The learned counsel for the applicants submitted that the version of the first informant is at variance with the version of Police Patil Mr. Baliram Mirkute. He had stated that there was a fight between two groups. The deceased had sustained bleeding injuries in the said fight.

7. The learned counsel further submitted that in the said occurrence, Yogesh Chavan, a member of the accused party had sustained a stab injury. In respect of the very same incident, a first information report bearing No. 371 of 2022 was lodged. Despite the co-accused Yogesh Chavan having sustained stab injury to left flank region mid auxiliary line, the police had registered a crime for the offences punishable under sections 323 and 324 read with 34 of the Indian Penal Code, 1860 only. It was

submitted that the applicants have been roped in by giving an exaggerated version.

8. The learned APP resisted the prayer for bail. It was submitted that the applicants were the members of the unlawful assembly and also shared the common object in prosecution of which the deceased was done to death. A specific role has been attributed to both the applicants. Therefore, the applicants do not deserve exercise of the discretion.

9. The learned counsel for the first informant also vehemently opposed the prayer for bail.

10. From the perusal of the allegations in the first information report as well as the statements of the witnesses including Santosh Khupse, Kishor Dhamne and Vrushali Khupse, it prima facie becomes evident that the informant party had reached at the house of the Police Patil on the dead of the night. Both the groups had a free fight. The members of both the groups sustained injuries. The injury certificate of Yogesh Chavan issued by LTMG Hospital, Sion indicates that the said accused had narrated history of assault by sharp weapon. The co-accused Yogesh Chavan was examined on

22nd August, 2022. There was a stab injury admeasuring 3 x 3 cm, perifonal bruch omentum pouting out.

11. The tenor of the statements of the witnesses indicates that after the altercation ensued, initially there was a fight between Kailash Shelke and Dilip Khupse. The co-accused Kailash Sheke gave blows by means of chopper on the person of the deceased. In the aforesaid view of the matter, the role attributed to the applicants of being the members of unlawful assembly and having committed murder of the deceased in prosecution of common object of the unlawful assembly, is required to be appreciated. The applicant Amol had allegedly caught hold of the deceased. Applicant Nikhil allegedly assaulted the deceased by meme of a wooden log. However, the postmortem report indicates that the deceased had sustained four incised wounds. There were no marks of injuries by a hard and blunt object. The learned APP submitted that two ribs were also fractured. The fracture of ribs is also prima facie attribute to the injuries, by means of sharp weapons.

12. In the aforesaid view of the matter, a prima facie case for exercise of discretion is made out in favour of the applicants. The applicant Nikhil is in custody since 22nd August, 2022 and the

applicant Amol is in custody since 13th September, 2022. The trial will take time. I am, therefore, inclined to allow the application.

Hence, the following order.

ORDER

- 1] The application is allowed.
- 2] The applicants be released on bail in C.R. No. 348 of 2022 registered with Shahapur police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount, each.
- 3] The applicants shall not enter the jurisdiction of village Andad till conclusion of the trial.
- 4] The applicants shall mark their presence at Shahapur police station on the first Monday of every alternate month in between 11 am to 1 pm till conclusion of the trial.
- 5] The applicants shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.
- 6] The applicants shall furnish their contact numbers and residential addresses to the investigating officer and shall keep him updated, in case there is any change.

7] The applicants shall regularly attend the proceedings before the jurisdictional Court.

8] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N. J. JAMADAR, J.)