

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

CRIMINAL BAIL APPLICATION NO. 3840 OF 2024

Akshay Anil Lomte	...Applicant
Versus	
State Of Maharashtra	...Respondent

Mr.Bhushan Raut a/w Mr. Rohan Athawale, for the Applicant.

Mr.H. J. Dedhia, APP for the Respondent – State.

CORAM	:	N. J. JAMADAR, J.
DATE	:	24th OCTOBER 2024

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PC.:

1. Heard the learned Counsel for the Applicant and the learned APP for the State.

2. The Applicant, who is arraigned in C.R. No.291 of 2019 registered with Chakan Police Station, Pune, for the offences punishable under Sections 120B, 302, 307, 341, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code, 1860 and Section 4 read with Section 25 of the Arms Act and Section 7 of the Criminal Law Amendment Act, 2013, and Sections 37(1) (2) read with Section 135 of the Maharashtra Police Act, 1951, has preferred this application for bail.

3. At the outset, Mr.Raut, the learned Counsel for the Applicant, submits that the Applicant is entitled to be enlarged

on bail on the ground of parity as this Court has released Sachin Ashok Langdapure, the co-accused on bail. The role attributed to the Applicant and Sachin Langdapure is, by and large, similar. Sachin Langdapure was allegedly armed with a wooden log. Whereas, the Applicant has allegedly assaulted the first informant by means of an iron rod. It is not the prosecution case that the Applicant had assaulted the deceased. The Applicant has been in custody since 9th February 2019. Therefore, the Applicant deserves to be enlarged on bail.

4. The learned APP, tendered the statement of Piyush Shankar Dhadge, the first informant recorded under Section 164 of the Code of Criminal Procedure, 1973 for the perusal of the Court. It was submitted that the Applicant was a member of the unlawful assembly and in prosecution of the common object of which, the deceased was killed and first informant was assaulted. Therefore the fact that the Applicant did not assault the deceased, is not of material significance. The learned APP, however, fairly submitted that the principle of parity may apply.

5. While releasing the co-accused Sachin Langdapure on bail, this Court had observed, *inter alia*, as under:

“11. I have given my anxious consideration to the aforesaid submissions. First and foremost, it is imperative to note that the deceased had sustained as many as 26 external injuries. Evidently, the deceased was assaulted brutally and relentlessly. However, most of the injuries were incised and stab wounds caused by sharp weapons. There were fractures of parietal bone left side posterior aspect of scalp. Multiple stab incised wounds were noted over scalp parietal region. In the opinion of the medical officer, the deceased died on account of severe intracranial hemorrhage with polytrauma.

12. It would be contextually relevant to note that the injury certificate of the first informant revealed that the first informant had sustained CLWs over the head with history of assault by means of sharp weapon.

13. If the allegations in the FIR are construed in conjunction with the aforesaid external injuries noted in the PM report and the injury certificate of the first informant, it prima facie appears that both the deceased and the first informant were primarily assaulted by sharp weapons and iron rod. The first informant attributes the role of assault by means of scythes to Akshay Shinde and ‘X’. Aakash Lomte allegedly assaulted him by means of an iron rod. For the first informant, the deceased was assaulted by Pangya, Bafan and Babya by means of scythes. The first informant further alleges that all the accused unleashed blows by means of scythe, iron rod and wooden log on the deceased.

14. The situation which thus obtains is that the Applicant was allegedly armed with a wooden log. The co-accused were armed with deadly weapons. The injuries sustained by the deceased and the first informant, prima facie, appear to have been caused by those deadly weapons. The role attributed to the Applicant, thus, appears to be distinct from that of the assailants who were armed with deadly weapons. To add to this, there is no specific allegation that the Applicant either assaulted the deceased or the first informant.

15. Though the first informant claimed that Abhishek witnessed the alleged assault, yet the statement of Abhishek does not lend support to the said version. Abhishek claimed that on the day of occurrence, after he returned home at about 7.30 p.m., he learnt that the deceased and first informant were assaulted by the co-accused and the Applicant. Even in the supplementary statement of the first informant – Piyush, no specific role appears to have been attributed to the Applicant. On the contrary, Piyush stated

that co-accused Bafan was not present at the scene of occurrence and did not participate in the murderous assault.

16. The investigation is complete for all intent and purpose. Charge sheet has been lodged. The Applicant has been in custody since 9th February, 2019.

17. In the totality of the circumstance, on account of the role attributed to the Applicant, in my view, a *prima facie* case for exercise of discretion in favour of the Applicant is made out. The Applicant appears to have roots in the Society to tie him down to his place of abode. The apprehension on the part of the prosecution can be taken care of by imposing appropriate conditions. Hence, the following order :”

6. The aforesaid reasons apply with equal force to the claim of the Applicant for bail. There does not appear much qualitative difference in the role attributed to the applicant and Sachin Langdapur, who is enlarged on bail.

7. I have perused the statement of the first informant recorded under Section 164 of Cr.PC.. *Prima facie* it does not appear that the Applicant was named as the associate of Akash Shinde, the principal accused. It does not appear that the applicant had assaulted the deceased.

8. Moreover, the Applicant has been in custody since 9th February 2019. Having regard to the large pendency of cases, it is unlikely that the trial can be concluded within a reasonable period. Thus, I am inclined to exercise the discretion in favour of

the Applicant.

9. Hence, the following order:

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Akshay Anil Lomte be released on bail in C.R. No. 291 of 2019 registered with Chakan Police Station, Pune, on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge, Pune.
- (iii) The Applicant shall mark his presence at Chakan Police Station on the first day of every alternate month till the framing of charge.
- (iv) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- (v) The Applicant shall furnish his residential address as well as contact details to the Senior Inspector of Police, Chakan Police Station and update the same in case of any change therein.

(vi) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration 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 learned Sessions Judge shall decide the case on its own merits, in accordance with law, uninfluenced by any of the observations made in this order.

Application disposed.

(N. J. JAMADAR, J.)