

Akash @ Chintya Prakash Shinde	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Shriganesh S. Sawalkar with Ms. Gayatri Yadav, Mr. Prafool Surodkar, for Applicant.

Mr. H.J.Dedhia, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 19 DECEMBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R.No.237 of 2021 registered with Hill Line Police Station, for the offences punishable under Sections 120-B, 302, 201, 143, 144, 147, 148, 149 and 506(2) of the Indian Penal Code, 1860, Section 135 read with Section 37(1) of the Maharashtra Police Act, 1951 and Section 4 read with Section 25 of the Arms Act, 1959, has preferred this application to enlarge him on bail.
3. Sushant Bhaskar Gaikwad @ Gudya (the deceased) was a friend of Kunal Gaikwad, the first informant. There was animosity between the deceased and Akash Shinde @ Chintya (A1), the applicant. On 17 September 2021, the deceased, first informant and their friend Prakash Raibole had drinks at Premnagar Hill. At 2.00 p.m., they came in front of the

meat stall of Makhansingh. The first informant went to fetch a cigarette. He heard cries of 'Guddya found'. The first informant noticed that Akash @ Chintya (A1) – the applicant, Amol More @ Vangya (A2), Yash Rupvate @ Monya (A3), Abhirup Thorat (A4) and a child in conflict with law were coming towards the deceased armed with sword, scythe, knife and iron rod. They exhorted that the deceased should not be spared. After noticing them, the deceased tried to flee away. The first informant also ran towards Dena Bank Lane and witnessed the occurrence.

4. The applicant Akash @ Chintya (A1) and co-accused Amol More @ Vangya (A2), Yash Rupvate @ Monya (A3), Abhirup Thorat (A4) and the child in conflict with law, allegedly assaulted the deceased by means of sword, scythe, knife and iron rod. Prakash, the friend of the first informant also fled away in his auto rikshaw. After a few moments, the first informant saw the applicant and his associates ran back towards Netaji Chowk. Thereafter, the first informant went to the place where accused assaulted the deceased. The latter was lying in a pool on blood. He had sustained grievous injuries. Police arrived. He was shifted to the Central Hospital, Ulhasnagar. While the first informant was on the way to hospital, a person called on the cellphone of the first informant and identified himself as 'Chintya' and threatened to eliminate the first informant as well. Eventually, the deceased succumbed to the injuries.

5. Mr. Sawalkar, learned Counsel for the applicant, submitted that by an order dated 15 April 2024 in BA Nos.2842 of 2023 and 1244 of 2023, co-accused Kaivalya Malhari Shikhre @ Kai and Ganesh Ashok Gaikwad have been enlarged on bail. This Court has adverted to the aspect of delay in recording the statement of Prakash Raibole on 5 October 2021, though he was alleged to be an eye witness to the occurrence, and observed that the veracity of evidence of Prakash Raibole would be a matter for trial. The said reasoning also governs the claim of the applicant for bail. Therefore, applicant deserves to be enlarged on bail.

6. Mr. Dedhia, learned APP, resisted the prayer for bail. It was submitted that the principle of parity does not apply as the applicant was the principal assailant. There is a direct evidence against the applicant. Therefore, the applicant does not deserve to be enlarged on bail.

7. I have perused the material on record. To begin with, it is necessary to note that the deceased had sustained as many as 24 incised wounds and stab injuries by means of sharp weapons. Post mortem report, prima facie, indicates that the deceased was brutally assaulted by deadly weapons with ferocity. The nature of injuries found on the person of the deceased, coupled with the facts that the applicant has been named as the principal assailant, the applicant had animosity with the deceased and the applicant had allegedly called the first informant after the occurrence, while the deceased was being

shifted to the hospital and threatened to eliminate the first informant as well, make out a very strong prima facie case against the applicant.

8. The endeavour of the applicant to claim parity is wholly misplaced. Co-accused, who have been released on bail, were not named in the FIR or in the initial statement of the alleged eye witnesses. Conversely, the applicant was specifically named as the assailant who mounted assault along with the co-accused armed with deadly weapons and brutally assaulted the deceased in most ferocious manner. The apprehension of tampering with evidence and threatening the witnesses appears well founded.

9. This is not a case for bail.

10. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

(N.J.JAMADAR, J.)