

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

**INTERIM APPLICATION NO.2268 OF 2024
IN
CRIMINAL APPEAL NO.1408 OF 2018**

Gajanan Pralhad Kakade Applicant

versus

The State of Maharashtra Respondent

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- Mr. Ganesh Gole i/b. Shirodkar Ateet, Advocate for Applicant.
- Smt. M. M. Deshmukh, APP for the State/Respondent.
- Mr. Himanshu Gavit, appeared through VC, for the first informant.

**CORAM : SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE : 22nd JANUARY, 2025

P.C. :

1. This is an application for bail pending Appeal of the Appellant Gajanan Kakade. The Applicant was the original accused No.4. He alongwith others was convicted for commission of offence punishable u/s 302 r/w 34, u/s 326 r/w 34, u/s 504 r/w 34 and u/s 506 r/w 34 of the Indian Penal Code. The major sentence imposed on the convicted accused Nos.1 to 4 was life imprisonment. As of today, the accused No.1

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Jaydrath Kakade and accused No.3 Dhananjay @ Sonu Kakade are on bail pending their Appeal. It may be noted that all the four convicted accused had preferred a common Appeal i.e. Criminal Appeal No.1408 of 2018, challenging the Judgment and Order dated 19/09/2018 passed by the Additional Sessions Judge, Nashik, in Sessions Case No.240 of 2015.

2. Heard Mr. Ganesh Gole, learned counsel for the Applicant, Mr. Himanshu Gavit, learned counsel for the first informant and Smt. M. M. Deshmukh, learned APP for the State.
3. The Applicant had earlier filed Criminal Application No.717 of 2019 in Criminal Appeal No.1408 of 2018 for his release on bail during pendency of the Appeal. That application was rejected by the Division Bench of this Court vide the order dated 21/06/2019.
4. The Applicant was arrested on 14/05/2015 and since then for almost 10 years he is in custody, barring his release on Covid Parole for a few days.

5. Learned counsel for the Applicant submitted that subsequent to this, two other Division Benches have granted bail to the other two accused as mentioned earlier. The order dated 31/10/2023 passed in Interim Application No.1169 of 2020 in the same Appeal has directed release of the original accused No.3 Dhananjay @ Sonu Kakade. Whereas vide the order passed on 05/04/2024 in Interim Application No.189 of 2024 in the same Appeal, the original accused No.1 Jaydrath Kakde was granted bail. Learned counsel for the Applicant today claims parity and change of circumstances.

6. Considering these submissions, we are convinced that there are serious changes in the circumstances as the other two co-accused are granted bail subsequently and also because the Applicant is in custody for a long period of almost 10 years. Learned counsel for the Applicant further submitted that the cause of death was directly attributable to the acts of the accused who are granted bail and not to the present Applicant,

which is an additional circumstance, which the Court may take into consideration.

7. From that point of view, we have heard the parties. In the interest of justice we also heard learned counsel Mr. Himanshu Gavit, who appears for the original first informant. We have heard learned APP Smt. Deshmukh as well.

8. Learned counsel for the Applicant submitted that there are three eyewitnesses to the incident according to the prosecution case. They are are P.W.1, P.W.2 and P.W.3. All of them have consistently deposed that the Applicant was carrying sword. Two of the eyewitnesses have deposed that the Applicant assaulted the deceased causing bleeding injuries, but the main assault which had resulted in the death of the deceased was with the iron rods. The fatal blow was on the chest. That blow is not attributed to the present Applicant. In fact, the allegations are that the accused Nos.1, 2 and 3 were carrying the iron rod and therefore the Applicant's case stands on a better footing.

9. Learned counsel for the first informant submitted that there is a specific role attributed to the Applicant. He was carrying a more deadly weapon in the form of sword. All the accused had gone to the spot together. Therefore, there was a clear common intention entertained by all the accused. He further submitted that while the Applicant was on parole, he had threatened the witnesses, for which a separate NC is lodged. Therefore, bail may not be granted to the Applicant.

10. Learned APP relied on the evidence of the eyewitnesses to contend that since the Applicant was carrying a deadly weapon like a sword, he may not be granted bail.

11. We have considered these submissions. We have also perused the evidence of the eyewitnesses and medical evidence annexed to this application. P.W.1 Amjad Shaikh Ibrahim, the first informant, has described the incident. He was the brother of the deceased Salim. He has stated that all the accused started quarreling with the informant's group. The informant's brother Salim questioned the accused for pelting stones on their house.

P.W.1's nephew Salman tried to intervene. At that time, the accused No.1 Jaydrath, accused No.2 Ilu Kakade and accused No.3 Sonu assaulted Salim with iron rods on his chest, stomach and leg. He fell down. At that time, the accused Jaydrath and Ilu assaulted Salim on his chest. There is a specific allegation against the Applicant that he assaulted Salim with sword on the right and left hand fingers.

12. P.W.2 Rukhsana Shaikh was Salim's sister. She had reached the spot by which time Salim had already sustained injuries on his fingers. She has deposed that other ladies from her family were assaulted by all the accused.

13. P.W.3 Salman Shaikh was the nephew of the deceased Salim. He has described the incident in the same manner as is described by the P.W.1.

14. In this context, the post-mortem notes show that there were two injuries. The first was contused abrasion over right side of the chest and the second injury was multiple incised

wounds on the left hand fingers. The cause of death was mentioned as 'death due to hemorrhagic shock due to blunt trauma to chest'. Thus, it is apparent from the medical evidence that the cause of death was the injury on the chest. It was a blunt trauma. It can be caused by iron rod and not with a sharp weapon like a sword. The Applicant's sword has caused bleeding injuries on the left hand fingers of the deceased. Thus, the cause of death is attributed to the accused carrying iron rods. Two of them, as mentioned earlier, are granted bail by two orders passed by two Division Benches of this Court. The present Applicant is attributed injuries to the fingers. Therefore, his case stands on a better footing than the accused who are released on bail. In this view of the matter, the Applicant also deserves to be released on bail. However, as submitted by the learned counsel for the first informant, there is an NC lodged against the Applicant. Therefore, to ensure safety of the witnesses, some conditions are required to be imposed on the Applicant.

15. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.1408 of 2018, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.
- (ii) The Applicant shall report to the concerned police station, once a fortnight for a period of two years from today.
- (iii) Interim Application stands disposed of accordingly.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)