

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

CRIMINAL APPEAL NO.1026 OF 2025

Amit Kailas Varghade

Age : 24 Years, Occupation : Business,

Residing at : 18, Parijat Apartment,

Talegaon Dabhade, Maval, Pune.

...Appellant

Versus

1. **The State of Maharashtra**

(Through Dehu Road Police Station)

2. **Vijay Ramsharan Thori**

(Residing at : 03, Sangita Apartment,

Vikasnagar, Dehu Road, Haveli,

Pune).

...Respondents

Smt.Pushpa Ganediwala a/w Mr.Aniket B. Rathod, Ms.Anshu Agrawal and Mr.Pradyumna Agrawal:-	Advocates for Appellant.
Mr.Ashok S. Gawai:-	APP for Respondent No.1 -State.
Ms.Jai Kanade:-	Advocate for Respondent No.2 (Through Legal Aid).
Mr.Akshay Jadhav – PSI:-	Dehu Road Police Station – Pimpri Chinchwad.

CORAM : S. M. MODAK, J.

DATE : 16th OCTOBER 2025

P.C. :-

1. Heard learned Advocate Ms.Ganediwala for the Appellant and learned APP and learned appointed Advocate Ms.Kanade for the First-

Informant.

2. The present Appellant is facing trial for committing a murder of one Vishal Vijay Thori along with other Accused persons. On the complaint of his father – Vijay, the FIR is lodged at Dehu Road Police Station on 6th March 2024 for the offences under Sections 302, 143, 147, 149, 506 of the Indian Penal Code, 1860 (“**IPC**”).

3. According to the prosecution, the motive of committing the murder of Vishal is the previous quarrel in between the deceased and the co-accused Rohan Deshmukh. The said quarrel took place on 5th March 2024 at about 10.43 p.m. It was in front of the shop of Accused – Rohan. At that time, in fact the Accused Rohan was assaulted by the deceased with the help of stone. This was told to the **witness Bhagyesh Darvatkar by deceased Vishal**. As a result, the witness Bhagyesh called the Accused – Rohan. The Accused – Rohan replied that in fact the deceased Vishal had been to his shop and threatened him to set the shop on fire. The Accused – Rohan tried to explain about meeting the deceased.

4. The witness – Bhagyesh has further stated that the Accused Suyash Deshmukh got annoyed because his brother Rohan was threatened of setting the shop on fire and that is why they have called

the co-accused including the present Appellant and that is how they have assaulted the deceased at 12.30 a.m. at the midnight. The witness Bhagyesh has explained as to how the deceased Vishal was beaten. The submission is on the basis of this statement of Bhagyesh, the present Appellant came to be arrested. It is on the basis of information given by co-accused through Bhagyesh.

5. During investigation, the statement of two witnesses, **one Mahesh Naik** and **one Mukesh Jha** were recorded on 16th March 2024. They have witnessed assault by four to five persons on another person and he has fallen down. It is in the intervening night of 5th March and 6th March 2024. These two witnesses were not knowing the assailants. However, both of them have explained the physical description and the clothes wore by them and attempt of assault. These witnesses have informed to the Police about this assault.

6. Learned Advocate Ms.Ganediwala tried to submit that the statement of Mahesh and Mukesh are nothing but the copy paste and if we read them minutely, one can find that these witnesses have not given the details of the assault independently but the Police have just copy paste both the statements. According to her, both these witnesses were asked to remain present in the parade. It was conducted belatedly

and during the period, these witnesses have not stated what is the exact role played by all the Accused persons in beating the deceased.

7. She tried to explain, what are the **articles which were found at the spot** which is recorded in the crime details form on Page No.43. According to her, the stick alleged to be used by the Appellant was not found at the spot. When the two eye witnesses have informed to the Police about the assault, there is an internal report given by the Assistant Sub-Inspector – Dehu Road Police Station addressed to the Senior Police Station on Page No.48. When the Police team has visited the spot, the caller does not found. Ms.Ganediwala relied upon this circumstance to doubt the prosecution case.

8. According to her, the description of the **clothes wore by the assailants** as stated by the two alleged eye witnesses does not tally with the clothes which were described for these Appellants in the clothes seizure panchnama on Page No.79. She has also brought to my notice **the statement of the shop keepers** near the spot of the incident at Sai Darshan Society, Dehu Road, Pune. When they had come to their shop on the next date morning on 6th March 2024, they have noticed certain articles lying on the spot. It is the prosecution case that these are the articles by which the assailants have beaten the deceased. According to

her, the wooden rod was not noticed there. She has also emphasized on the **variance in the timings of the incident** as depicted by various witnesses. According to her, the Appellant is young boy and he has remained in jail for more than one year and in fact her client is unnecessarily facing the trial and it is the fact that the co-accused has applied for recalling the witnesses.

9. By way of reply, **learned Advocate Ms.Kanade** vehemently opposed the grant of bail on two grounds. First, on the **ground of merits** and the second submissions advanced now cannot be considered at this stage because **it will amount to appreciation of evidence** which Court should not do particularly when the trial has started. To support her contention, she relied upon the observations in case of ***Narayan Ghosh Alias Nantu V/s. State of Orissa***¹. She has read the observations in paragraph Nos.9 and 10. According to Ms.Ganediwala, the facts of this case are different from the facts involved in this Appeal.

10. Secondly, Ms.Kanade contended that the trial has already started and only evidence of the Investigating Officer remained and there is an Application for recalling of some of the witnesses. According to her, the remaining trial can be completed within a short span of time. She has brought to my notice same materials which are pointed out to me

¹ (2008) 3 Supreme Court Cases 693

by Ms.Ganediwala. According to her, even on the basis of these materials, the involvement of the Appellant is disclosed. She has substantiated her argument by contending that the two witnesses have seen the incident and the assault and they have described the assailants by describing their clothes and the same witnesses have identified the assailants in the parade. According to her, this material is sufficient to warrant further detention of the Appellant till conclusion of the trial.

11. According to her, even though the learned Single Judge of this Court has granted bail to the co-accused Vijaya Deshmukh by one order and Rajesh Deshmukh by another order, the Accused Rohan after admitting the bail has threatened the witnesses and there is a N.C. complaint filed in the concerned Police Station.

12. It is true the considerations for grant of bail when the trial has not started and the considerations for grant of bail after the trial has started are different. Learned Advocate Ms.Ganediwala tried her level best to convince that the role of this Appellant is different from the role of the Accused who are granted bail. In fact she has not relied upon the bail order granted for Accused but when the Respondents submitted that they are going to file an Application for cancellation, she has made this submission.

13. After going through the materials, this Court feels that it is not a case for bail particularly when the trial is at the fag end.
14. At this stage, learned Advocate Ms.Ganediwala submitted that she wants to withdraw the Appeal for the reason, the trial is at the fag end. **It is disposed of as withdrawn.**
15. The trial Court is directed to complete the remaining trial as early as possible considering the fact that the Appellant and other Accused are '*undertrial prisoners*'.
16. With these observations, the **Appeal stands disposed of.**

[S.M.MODAK, J.]