

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2471 OF 2025
IN
CRIMINAL APPEAL NO.678 OF 2025

Kundlik @ Kondiram Pandurang Kanap

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Tanvii Tapkire for the Applicant.

Mr. K.V. Saste, APP for the Respondent – State.

CORAM : SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.

DATED : 31st JULY, 2025.

P.C. :-

1. Present Application seeking bail pending the aforesaid Appeal has been preferred by the Applicant/Original Accused No.5 in Sessions Case No.44 of 2018. Therein the Additional Sessions Judge, Sangli by his Judgment and Order dated 7th January, 2025 acquitted the Original Accused No.7-Sunil Kolekar but convicted the Applicant and other five Accused persons with him, for commission of offences punishable under Section 302 read with Section 149 and under Sections 143, 147 and 148 of the I.P.C. The major sentence imposed on them was imprisonment for life besides the imposition of fine.

2. Heard Ms. Tapkire, learned Counsel for the Applicant and Mr. Saste, learned APP for the Respondent – State.

3. The incident occurred in the night intervening 1st December, 2017 and 2nd December, 2017. As per the prosecution story, during an entertainment programme arranged in the village, the Applicant's group had behaved in an unruly manner and they had disturbed the programme. One Ashok Bhosale and his brother Prakash Bhosale took an exception to such behaviour and they complained to the village panchas. The Applicant's group got annoyed. In the night, all the Accused came on two wheelers carrying weapons like gupti and sticks. Prakash and Ashok were assaulted. Ashok was assaulted on his thigh and buttocks with sharp weapon, cutting his femoral vein causing his death. On these allegations, the F.I.R. was lodged by Ashok's father. Investigation was carried out and the Applicant was arrested on 6th December, 2017. During trial the prosecution relied mainly on the evidence of the eye witnesses i.e. PW1- Tanaji Bhosale, who was the father of the deceased, PW3-Prakash Bhosale, who was the brother of the deceased and who was also injured in the incident. The third eye witness was PW4- Dnyaneshwar Bhosale, who was one of the panchas in the village. Their evidence narrating the incident, was consistent.

4. Ms. Tapkire, the learned Counsel for the Applicant submitted that, the incident had not occurred in the manner as stated in the FIR. She submitted that, in fact, the members of the party of the deceased were the aggressors.

However, suppressing the true story from the police, the F.I.R. was filed by concocting a story of the murder, as noted above. She submitted that, as alleged, like Accused No.6, the Applicant had also inflicted stick blows to the deceased. Yet, the medical evidence of P.W.10 Dr. Ajay Bhosekar and the post-mortem report indicates that the injuries allegedly caused by sticks were on the shoulder of the deceased. Admittedly, the said injuries did not result into the death of the deceased as evident from the medical evidence. As such, it cannot be said that the Applicant had intention to cause the death of the deceased. Lastly, she submitted that the Original Accused No.6 who had the role of inflicting stick blows to the deceased, had been granted bail by this Court. The case and the evidence against the Applicant stands on the same footing. She submitted that, the Applicant was on bail during the trial. Said liberty of bail was, however, not misused by the Applicant. She has therefore submitted that the Applicant may be enlarged on bail.

5. Learned APP, on the other hand, submitted that, there is consistent evidence by P.W. Nos.1, 3 and 4 that the Applicant and his co-accused assaulted the deceased with an intention to cause his death. For that purpose, all the accused had come together carrying the weapons as stated above. As such, the common object to commit the murder of the deceased was manifest. Therefore, the trial Court has convicted the Applicant and the co-accused persons as stated in paragraph 1 above.

6. We have considered these submissions and perused the material.

7. PW1-Tanaji Bhosale is the father of the deceased. His testimony indicates that, the Applicant's group created disturbance during the entertainment programme. Therefore, both his sons i.e. Ashok and Prakash complained to a panch committee and requested to make the Applicant's group understand to behave properly. However, after the said programme was over, all the Accused came to that spot including acquitted Accused No.7, forming an unlawful assembly and carrying weapons. The Accused Sandip and Vishal were carrying gupti, Accused No.3-Sagar was having *kukri*, the others were having sticks, including the Applicant. Specific role of assault with gupti is attributed to Sandip and Vishal. There is an assertion that the other Accused assaulted Ashok with sticks on his shoulder, back and other parts. His another son Prakash (PW3) was assaulted on his eye and back by the Accused-Kolekar. The Accused then fled, leaving their two wheelers at the spot. Ashok was taken to the dispensary but he was declared dead.

8. The testimony of PW3-Prakash Bhosale is on the same line. It is supported with the evidence of PW4-Dnyaneshwar Bhosale. PW.4 deposed that, Prakash and Ashok had complained him about the Applicant's group. The evidence of PW Nos.1, 3 and 4 is free from significant discrepancy.

9. The deceased had suffered three incised wounds, as can be seen from the postmortem notes. Two of the wounds were on the right thigh. One wound damaged the right gluteal region. The cause of death was

mentioned as 'hemorrhagic shock due to multiple injuries'. In so far as Prakash is concerned, the Medical Certificate shows that, he had suffered three contusions, one abrasion and one incised wound near his eye, but the same were opined as simple injuries.

10. Taking note of the aforesaid material, while granting bail to the said Accused No.6, this Court observed that, "*... if there was a common object arising out of that grudge, then Prakash and Ashok both were the targets. However, it can be seen from the evidence that Prakash had suffered only simple injuries, whereas three incised wounds were caused to Ashok on the thigh and the surrounding region. It was not on the abdomen or thorax. Therefore, at this stage, we find substance in the submissions of the learned senior counsel that, the common object was not to commit murder of the deceased but to cause assault, which could have resulted in causing hurt or even grievous hurt but not the injury resulting in death.*" The Applicant is attributed with the role of using a stick, like the Accused No.6. But, the stick was not used to strike on any vital part of the body. Therefore, for consideration of bail, at this stage, "the ground of parity" canvased by the learned counsel for the Applicant can be accepted. The Applicant was on bail during trial, which liberty he did not misuse. Therefore, we are inclined to allow this Application.

11. It is made clear that, these observations are made only for the purpose of deciding this Bail Application. All these aspects will have to be considered

finally, at the stage of hearing. At this stage, the Applicant has made out a case for grant of bail pending the Appeal. Hence, the following order :-

:: ORDER ::

- (i) During pendency and final disposal of Criminal Appeal No.678 of 2025, the Applicant/Original Accused No.5 in Sessions Case No.44 of 2018 is directed to be released on bail on his executing P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount.
- (ii) The Application is disposed of.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)

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