

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

**BAIL APPLICATION NO.2092 OF 2016**

Shri Vijay Rajendra Gambhire ... Applicant

Vs.

The State of Maharashtra .. Respondent

**with  
BAIL APPLICATION NO.2160 OF 2016**

Shri Ganesh @ Ranjeet Shankar Yadav ... Applicant

Vs.

The State of Maharashtra .. Respondent

**and  
BAIL APPLICATION NO.2368 OF 2016**

Shri Ajay Dilip Lalge ... Applicant

Vs.

The State of Maharashtra .. Respondent

Mr.A.A. Desai for the Applicant in BA/2092/2016 and 2160/2016  
Mr.Debajyoti Talukdar for Applicant in BA/2368/2016  
Mr.Deepak Thakre, PP with Mr.J.P. Yagnik, APP and Mr.Y.M. Nakhwa, APP, for State  
Mr.Anant Bhushan Kanade, Senior Advocate with Mateen Shaikh with Ansar Tamboli, Shahid Nadeem and Sajid Qureshi for Intervener/Complainant  
Mr.Vishwajeet Khule, PI, Hadapsar police station, Pune - present

**CORAM: Mrs.MRIDULA BHATKAR, J.**

**DATED: MARCH 28, 2018**

**P.C. :**

1. These bail applications are preferred by the three applicants/accused who are charged for the offences punishable under sections 302, 307, 143, 147, 148, 149, 120B & 153A of the Indian Penal Code at C.R. No.305 of 2014 registered at Hadapsar police station, Pune. The incident of murder has taken place on 2.6.2014 at around 9.15pm near Unnati Nagar, Hadapsar, Pune. The deceased Shaikh Mohsin Mohammed Sadiq was returning alongwith his friend Riyaz Ahmed Mubarak Shendure after Namaz. At that time, nearly 21 to 23 accused persons arrived there on 7 to 8 motor cycles armed with hockey sticks, stumps, bats and stones. On account of attire and long beard, they identified the deceased Mohsin as a Muslim and, therefore, they assaulted him. They tried to assault Riyaz, however, he could escape. They all were shouting slogans in the name of Hindu Rashtra Sena, the main accused Dhananjay Desai and Chhatrapati Shivaji Maharaj. Thereafter, they went to other nearby places and assaulted one Amin Haroon Shaikh and Ejaj Yakub Bagban. The deceased Mohsin was severely injured. He fell down. His brother Shaikh

Mobin Mohammed Sadiq received information that Mohsin was attacked. So he rushed to the spot and found his brother was badly injured. He shifted Mohsin to the hospital. However, Mohsin was declared dead. He approached Hadapsar police station and gave information to the police on the same night. Immediately the police registered the offence at C.R. No.305 of 2014. The police arrested the accused No.3 Ranjit @ Ganesh Shankar Yadav on 3.6.2014 and the accused Nos.9 Ajay Lalge, accused No.10 Vijay Gambhire on 4.6.2014. The accused were in the custody till 12.1.2017 when this Court by an earlier order has granted bail. Thereafter, the said order was challenged before the Hon'ble Supreme Court and the Supreme court remanded this matter to decide the bail applications afresh and pursuant to the said order, the two accused Shri Vijay Rajendra Gambhire and Shri Ajay Dilip Lalge had appeared before this Court and as they were directed to surrender, they were taken in custody. The other accused i.e., accused No.3 Ranjit @ Ganesh Shankar Yadav, is already in custody because he had committed offence under sections 307, 323, 143, 147, 148 and 149 of the Indian Penal Code in C.R. No.444 of 2017 registered with Hadapsar police station on 7.5.2017. However, he is released on bail in that case. Hence,

these bail applications are heard afresh.

2. Mr.Desai, the learned Counsel appearing for the Applicants/accused in Bail Application Nos.2092 of 2016 and 2160 of 2016, submitted that the witnesses - Amin Haroon Shaikh and Ejaj Yakub Bagban – are the injured witnesses. The injury certificate of Amin Shaikh shows lacerated wounds on left arm as an outdoor-patient and the said injuries were minor in nature and that no admission in hospital was required. The injury certificate of Ejaj Bagban shows CLW on occipital region, abrasion on the right knee, abrasion on the left forearm, CLW on left hand. These injuries are shown as minor in nature.

3. He submitted that eye witness Riyaz Shendure, who was the pillion rider, did not identify these three applicants in Test Identification Parade. The witnesses did not mention names of these accused persons in police statements recorded u/s 161 of the Code of Criminal Procedure. He submitted that another witness Saddam Pathan, who has seen the people talking about the controversy near Hadapsar police station, however, even he is a pre-incident witness. During the time of patrolling, PSI Bhushan Pawar noticed that some people were riding on motor cycles. He

submitted that all the witnesses are either pre – incident or post - incident and not on the actual incident of murder.

4. As regards recovery of a hockey stick from accused No.3 Ganesh @ Ranjeet Yadav and recovery of one shirt, one trouser from Vijay Gambhire, the C.A. reports of blood stains are inconclusive. There is no recovery of weapon from applicant / accused Vijay Gambhire, except a motor bike which was recovered by PSI Darade.

5. Mr.Desai seeks parity. He submits that in criminal Bail Application No.1935 of 2015 by order dated 21.4.2016, this Court (Revati Mohite-Dere,J.) has granted bail to three accused, namely, Shubham Barde, Mahesh Khot and Abhishekh @ Banti Sayaji Chavan, who are the original accused Nos.5, 20 and 21, on the ground that there is no recovery; the C.A. report was inconclusive and the accused were not identified at the time of Test Identification Parade. He also submitted that in criminal Bail Application No.2184 of 2016, by order dated 2.3.2017, this Court (Revati Mohite-Dere, J.) granted bail to original accused No.7 Akash Ramesh Lashkare on two counts i.e., parity – that 17 accused have already been released on bail and no much

weightage can be given to the witnesses on pre-incident or post-incidents of crime. He submitted that the Court has observed that although the accused Akash Lashkare has been identified by three witnesses, no specific act has been attributed against him. It is observed in the said order dated 2.3.2017 as under:

“7. Perused the papers. It appears that there are no eye-witnesses to the actual assault on deceased – Sheikh Moseem and injured – Amin Harun Shaikh and Ejaj Bagawan. The two eye-witnesses to the alleged incident are pre-incident and post-incident. Although the applicant has been identified by three witnesses; Sheikh Mobeem Mohd. Sadik, Noor Ahmed Dalvai and Amin Harun Shaikh, no overt act has been ascribed by the said witnesses. It appears that Riyaz Ahmed Mubarak Shendure, also a witness, who was accompanying the deceased-Sheikh Moseem, has not identified the applicant. As far as recovery of wooden stick and clothes at the instance of the applicant are concerned, there are no blood stains on the said wooden stick and clothes. The material *qua* the applicant is similar to that of some of the co-accused, who have been enlarged on bail.  
...”

6. He also submitted that in bail application No.1013 of 2016 filed by the accused No.17 Prasad Balasaheb Pansare, this Court (A.M. Badar, J.) by order dated 16.6.2016 has granted bail. It is observed in the order that in the Test Identification Parade, the injured Amin Shaikh has not identified the said accused. Informant Shaikh Mobin is stated to have identified the said accused but no

overbearing importance can be given to such identification, considering the nature of other evidence. It is also observed that the informant Shaikh Mobin had not seen the assailant of his brother. Further, in Criminal Bail Application No.1021 of 2016, filed by original accused Pratik Pandit Sangale, this Court (A.M. Badar,J.) by its order dated 23.6.2016 has granted bail to the applicant / accused Pratik Pandit Sangale. In the said order, this Court has taken a view that both the witnesses Amin Shaikh and Noor Dalvai were at distant location from each other and this aspect is not challenged. He submitted that in respect of the present applicants / accused, a similar role is attributed in the Test Identification Parade dated 5.8.2014 about the incident of 2.6.2014. Thus, the learned Counsel submitted that out of total 21 accused, the bail is granted to 15 accused, who are attributed similar role.

7. Mr.Talukdar, the learned Counsel appearing for the applicant/accused Ajay Lalge, has adopted the submissions of Mr.Desai and argued that no offence is committed by the applicant/accused Ajay Lalge while on bail. The applicant/accused Ajay Lalge has been identified by Shaikh Mubin Mohd. Sadiq, the

brother of the deceased. However, it is a post-incident identification. One wooden stick, a half T-shirt, track pant are recovered from this accused, however, the C.A. report is inconclusive. He also submitted that although the witnesses, namely, Sunil Pandharkar and Santosh Gore have stated that they have seen the accused Ajay Lalge going with a wooden stick, it is post-incident. The Sessions Case No.644 of 2014 is stayed by the order of this Court on 19.12.2017.

8. Learned Prosecutor has opposed the bail applications mainly on two aspects – Firstly, the object of conducting the Test Identification Parade is to ascertain whether the police are investigating in proper direction or not. Even if the witness does not attribute any role to the accused, its value cannot be reduced. He submitted that the witness may give details of identification later on in the evidence before the Court. Secondly, the learned Prosecutor submitted that the presence of the witnesses was natural and they are not planted. He relied on the statement of the police witness, PSI Darade and submitted that he has stated that he saw the assailants running away. He relied on the affidavit of one Vishwajeet V. Khule, Police Inspector of Hadapsar police



station, dated 20.2.2018 filed in these bail applications.

9. The main submissions of the learned Counsel for the Intervener is that all the other accused, who are released on bail, were aged between 17 to 22 years, younger than the present applicants/accused, who are in the age group of 24 to 26 years. He has submitted that thus, not a single accused, who is aged 24 years or above, is granted bail.

10. Heard submissions. This is a most unfortunate murder of the deceased Mohsin who was innocent and a passerby alongwith his friend Riyaz, who was an eye witness.

11. None of the above orders have been challenged before the Hon'ble Supreme Court either by the State or the Complainant. Hence, the observations made and the finding given by this Court in other bail applications as mentioned earlier, is relied and adopted while deciding these bail applications.

12. From the facts of the case, it is clear that a mob of 23 persons from Hindu Rashtra Sena i.e., the accused persons, holding grudge and hostility against Muslims was involved in the assault. Half an hour prior to the actual incident of assault, there

was a meeting of these persons and they were provoked by the contents and the reference of a speech given by the accused No.19 Dhananjay Desai. Thus, they were instigated by the said accused Dhananjay Desai against Muslims by taking name of Chhatrapati Shivaji Maharaj and in the name of gods and giving reference of Babri Masjid demolition and also referring to the incident of defamatory matter against Chhatrapati Shivaji Maharaj on Facebook. Thus, they armed themselves with available weapons like hockey sticks, stumps, bats and stones and treating themselves as followers of Dhananjay Desai, they identified the Muslims, who were passersby and attacked them in the name of the religion.

13. Such kind of vengeance, assault in the name of any religion is never justified. No religion preaches violence but peace. Every person is expected to respect the other religion and not to commit any offence, causing any injury to a person, property and feelings of people of other religion and not to destruct/disregard the secular frame of the Constitution. Such crime is always condemned by the law.

14. However, the sad and unfortunate aspect of the reality

cannot be ignored as the Nobel Laureate for Peace Mr.Kofi Annan, the former Secretary General of the United Nations, while commenting on violence in the world, has rightly stated in his Nobel Lecture at Oslo, in December, 2001, thus:

“A genocide begins with the killing of one man – not for what he has done, but because of who he is.”

15. The something has happened in this case and, therefore, is not at all justified and not a mitigating circumstance.

16. It is a stage of bail. As guidelines, I rely on the principles laid down by the Supreme Court from time to time on the point of sections 437 and 439 of the Code of Criminal Procedure. In the case of **Sanjay Chandra vs. Central Bureau of Investigation**<sup>1</sup>, the Supreme Court has observed thus:

“14. ... The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship.

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<sup>1</sup> AIR 2012 SC 830

Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

17. In the case of **Dr.Vinod Bhandari vs. State of M.P.**<sup>1</sup>, the Supreme Court held thus:

“12. ... The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. ....”

18. In the present case, the test identification parade was conducted on 5.8.2014. The eye witnesses, namely, Shaikh Mobin Mohammad Saddik, Amin Harun Shaikh, Noor Ahmad Akbar Dalwai have identified some of the applicants as an assailant.

19. Perused papers. As per the submissions of the Public Prosecutor, there are four witnesses namely, Shaikh Mobin Mohammad Saddik, Amin Harun Shaikh and Noor Ahmad Akbar

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<sup>1</sup> 2015(1) Crimes 160 (SC)

Dalwai and Ahmed Mubarak Shendure. The presence of these witnesses either at the spot or around the spot or immediately after or before the incident cannot be questioned at this stage as they are also injured and affected persons. Ejaj Yakub Bagban is also a witness. No eye witness has mentioned the names of these applicants as assailants in their police statements. I have taken into account the arguments of Mr.Desai on the point of the identification and fixing role to the accused.

20. Alongwith incriminating *prima facie* circumstances, one has to weigh the mitigating circumstances also while considering bail. It is not a pre-designed crime. The accused had no personal vendetta against the deceased Mohsin. They were provoked by the speech and discussion in the meeting which had taken place just half an hour before the incident. On query, it is found that the accused had no serious criminal record prior to the incident i.e., 2.6.2014. One or two criminal cases of the years 2013 or 2014 under sections 323, 324, 144, 148, 149 are pending against the accused. Apart from these factors, the accused were in prison for more than a period of 2½ years. The Sessions Court has not framed charge. On query, it is informed that the other accused

have moved application for discharge and the Court has to decide those applications for discharge and the Court is yet to decide those applications. Now it is pointed out that this Court (A.S. Gadkari, J.) by order dated 19.12.2017 has stayed the Sessions Case No.644 of 2014. Thus, there is no possibility of commencement of the trial, in near future.

21. Under such circumstances, I am of the view that the accused can be granted bail by putting them to strict conditions. As stated above, it is to be noted that the learned Counsel for the applicants/accused have argued parity and have pointed out that earlier, this Court by its orders dated 21.4.2016, 16.6.2016 and 23.6.2016 has granted bail to the other accused. As regards the applicant/accused Ranjit @ Ganesh Shankar Yadav, who has committed offence under sections 307, 323, 143, 147, 148 and 149 of the Indian Penal Code in C.R. No.444 of 2017, the complainant in that case has filed an affidavit that he was not involved in that case and hence, he was granted bail. I also take note that the person, who is the root of this provocation i.e., Dhananjay Desai, is inside the prison and this Court has already rejected his bail in view of his misleading and provocative speeches. Earlier orders

of this Court granting bail and the reasoning therein, as mentioned above, are relied upon. Considering the evidence, the role attributed to the accused and the arguments advanced by the learned Counsel and the learned Prosecutor, and also for the reasons mentioned above, I am of view that the present applicants/accused have made out a case for bail.

22. In the circumstances, I hereby allow these applications on the following terms and conditions:

- i) The applicants/accused shall be released on bail upon furnishing P.R. Bonds in the sum of Rs.40,000/- each with one or two solvent sureties in the like amount;
- ii) The applicants/accused shall not pressurise the complainant or the witnesses in any manner whatsoever;
- iii) The applicants/accused shall not associate themselves with any religious organisation of such nature like Hindu Rashtra Sena;
- iv) The applicants/accused shall not indulge into criminal activity;

v) The applicants/accused shall attend the concerned police station once in two weeks for six months i.e., till 30<sup>th</sup> September, 2018 on every 1<sup>st</sup> and 15<sup>th</sup> day of each month between 6pm and 8pm.

vi) The applicants/accused shall attend on all the Court dates.

vii) In the event of breach of any of the conditions as mentioned above, the prosecution will be at liberty to move for cancellation of the bail.

23. The Bail applications are disposed of in the above terms.

**(MRIDULA BHATKAR, J.)**