

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.239 OF 2015
WITH
CRIMINAL APPLICATION NO.385 OF 2015

Mallikarjun Masu @ Sukhadev Gadade
and Another ... Applicants
vs.
The State of Maharashtra ... Respondent

Mr. Vikram Purwant, for the Applicants.
Mr. Arfan Sait, APP for Respondent – State.
Mr. S.P. Rajephandhare, for the Intervener in APPP No.385 of 2015.
Mr. Prakash Raskar, (API.), Mandrup police station, Solapur present.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: JUNE 29, 2015

P.C.:

- . Not on board. Upon mentioning taken on Board.
2. The application is moved for bail as the applicants/accused are prosecuted for the offences punishable under Section 302 read with section 34 of the Indian Penal Code which is registered at Mandrup police station, Solapur vide C.R. No. 73 of 2014.
3. The incident has taken place on the night intervening 13th June

and 14th June, 2014. The first information report is lodged on 14th June, 2014 by one Gajanand Tele who is the brother of the deceased Shivanand. It is the case of the prosecution that Gajanand Tele has given information to the police that there was rivalry between the complainant and the accused persons and one criminal case is also pending against the complainant in Solapur Court. Due to said rivalry, four accused persons have threatened earlier to the family members of the complainant. They have threatened them of life. It is the case of the prosecution that, on the night of 13th June, 2014 the deceased Shivanand when he was sleeping outside the house, he was assaulted and was murdered. Immediately on the same day the first information report was lodged. The applicants/accused along with other two accused were arrested on 16th June, 2015. Since then they are inside. Hence, this bail application.

4. The learned counsel for the applicants/accused submitted that accused Nos. 3 and 4 are released on bail. There is no eye witness to the incident. The applicants/accused are falsely implicated in this case due to suspicion. One eye witness is a boy of five years and his statement was recorded five months after the incident. He submitted that five months delay in recording the statement of a boy is not explained. There is no evidence against the applicants/accused. Under such circumstances, the

applicants/accused are entitled to bail. He further submitted that when the charge-sheet was filed, the learned Magistrate directed the investigating officer to conduct further investigation under Section 163(8) of the Code of Criminal Procedure and therefore the further investigation was conducted and supplementary statements were recorded. Then the statement of that boy, an eye witness was recorded. He submitted that till recording of the supplementary statement nobody has stated that the said boy has seen the incident. Therefore, they are entitled to bail.

5. The learned prosecutor opposed the bail application. He submitted that the prosecution has good case on merits especially on the point of motive. The informant has specifically mentioned the names of four accused persons in his complaint though the incident was not seen by him. Similarly there is recovery of blood stained clothes and also axe under Section 27 of the Evidence Act at the instance of accused No. 1 from his house. He further submitted that a boy on that night was sleeping with his father and due the incident, his clothes got stained with blood and they were seized under panchanama by police on the same day. The boy has suffered trauma and therefore his statement was not recorded by the police immediately.

6. Perused the first information report, statements and supplementary statements of the witnesses. So also the statement of a boy who is the son of the deceased. There is recovery of blood stained clothes and axe at the instance of applicant/accused. The informant has stated about the motive. Therefore, the applicants/accused were arrested on 16th June, 2014. Though the reason of delay in recording the statement of the boy is not mentioned anywhere, it is to be noted that his blood stained clothes were seized immediately by the police. *Prima facie* it shows that boy was sleeping with his father when the incident has taken place. However, it is also noted that the police have investigated after filing of the charge sheet under Section 173(8) of Code of Criminal Procedure. The police have filed supplementary charge sheet and recorded statement of the boy who claims to be an eye witness. In the said statement, the boy has stated the names of the applicants/accused. Thus *prima facie* there is sufficient evidence against the applicants/accused. However considering the age of the only eye witness, it is necessary for the trial Court to proceed with the matter immediately.

7. Hence, application for bail is rejected.

8. In view of the above, the criminal application No. 385 of 2015 stands disposed of.

9. The Sessions Court, Solapur to frame charge immediately and proceed with the mater on day to day basis and conclude the trial till 31st October, 2015.

10. The Registrar (Judicial) is hereby requested to communicate the order to the learned Principal Judge, Sessions Court, Solapur.

(MRS.MRIDULA BHATKAR, J.)