

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL BAIL APPLICATION NO.2438 OF 2014

Namdev Bhoja Kalel ... **Applicant**

V/s.

The State of Maharashtra ... Respondent

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Mr.Manoj S. Mohite, Advocate for the Applicant.

Mr. Deepak Thakre, APP for the Respondent/State.

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CORAM : ABHAY M. THIPSAY J.

DATED : 30TH JANUARY, 2015

P.C.

1. Heard Mr.Mohite, the learned counsel for the applicant. Heard Mr.Thakre, the learned Additional Public Prosecutor for the respondent/State. The learned APP states that the Investigating Officer is absent, in spite of having been communicated the directions of this Court given in the order dated 20th January, 2015.

2. The applicant's previous application for bail bearing No. 1226 of 2014 was rejected by me by order dated 16th July, 2014. However, now the prayer for bail has been renewed on the ground that there has been a change in the circumstance, since the

rejection of the applicant's previous bail application. This change is said to be the release of the co-accused on bail by this Court, after the rejection of the applicant's said bail application.

3. I have gone through the order passed by this Court while releasing the co-accused Shahai Jagu Narale on bail. [Bail Application No. 1372 of 2014 decided on 26th September, 2014 (CORAM : Mrs.Mridula Bhatkar J.)]

4. The learned counsel for the applicant empathetically submits that the case of the applicant cannot be treated differently from that of the co-accused. Moreover, what he has submitted is that the reasoning of the Court, as reflected in the order granting bail to the co-accused, applies squarely to the present applicant also.

5. While releasing the said co-accused on bail, this Court observed as follows :

“4. Perused the postmortem report. It discloses that the deceased died due to head injuries. There were multiple fractures to his skull. The blood stained stone was lying near the dead body. It showed that it was the weapon used for the assault. It appears from the record that the applicant/accused along with the co-accused and the deceased went together and drank liquor and thereafter they started abusing and fighting with each other. However, prima facie, it appears that the death occurred due to only head injuries, which were caused with a stone. Thus, it appears that only one

person has used the stone. The statement of the eye witnesses is not clear as to who used it. Two persons were present at the time of the said fatal assault. However, who assaulted is not clear.”

6. It is the emphasized part of the order on which the learned counsel for the applicant placed reliance. He submits that if who out of the two assaulted was not clear and if, therefore, the co-accused has been released on bail, (as a result of this lack of clarity), the same aspect should weigh in the present application also. Indeed, the Court has already held that only one person had used the stone. It is logically difficult to reject this contention of the learned counsel for the applicant.

7. While releasing the co-accused on bail, this Court also observed that the statements of the eye-witnesses were recorded about eight to nine days after the incident.

8. Mr.Mohite also submits that the prosecution case itself indicates that the death was caused in a sudden quarrel that took place while the deceased, applicant and the co-accused taking drinks together.

9. Considering all the relevant aspects of the matter and more particularly because the case of the applicant cannot be treated differently from that of the co-accused, who has been released on bail, I am inclined to grant bail to the applicant.

10. The application is allowed.
11. The applicant is ordered to be released on bail in the sum of Rs.50,000/- with one surety in the like amount or with two sureties of Rs.25,000/- each on the following conditions:
- i) The applicant shall not tamper with evidence and shall not indulge into any criminal activity while on bail;
 - ii) In the event of the applicant changing his residence, he shall communicate his new address, with documentary proof, to the concerned police station.
12. The application is disposed of accordingly.

(ABHAY M. THIPSAY J.)