

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.26 OF 2015

Bindarsingh Sunahrasingh Singh ...Applicant
vs.
State of Maharashtra ...Respondent

Mr. Sandip Mishra, Advocate for the Applicant.
Ms. A.T. Javeri, APP for the State.

CORAM : P.D. KODE, J.

DATE : JANUARY 20, 2015

P.C.

. Heard.

2. By this application the applicant/accused charge sheeted by Naupada police station, Thane for the commission of offence under Section 302 read with 34 of Indian Penal Code has prayed for bail.

3. The learned counsel for the applicant has submitted that the F.I.R. reveals that an accident had taken place near Cadbury junction, Highway, Thane. It is submitted that initially the crime was

registered for the offence under Section 304(A) of Indian Penal Code and later on after about one and half month Section 302 of Indian Penal Code is added probably after recording statement of sole eye witness Parwan Singh. It is submitted that a glance at the said statement reveals that though he claims to have seen the incident, had not reported it to the police. It is submitted that the F.I.R. as well as the statement of a parking person reveals that they were present at same place at the time when alleged incident had occurred. None of them claims of having occurred any incident as claimed by Parwan Singh, it is submitted that since none of them has lodged the report, it is difficult to accept matters as stated in the belated statement of Parwan Singh. It is further submitted that even the statement of Parwan Singh reveals that one blow of iron rod was given by the applicant on the head of victim Pawan Kumar but, the postmortem notes reveals that in as much as six

injuries are sustained by the deceased. It is submitted that material in the statement of Parwan Singh is thus incredible and as such apparently such matters are stated by him for false implication of the applicant. It is submitted that hence considering the delay in approaching the police and reporting said matter, the prayer for bail be favourably considered.

4. After perusal of the charge-sheet and particularly the statement of Parwan Singh, it is amply clear that though he has seen part of the incident, he has not seen the entire incident. Such *prima facie* conclusion is apparent as the material in his statement reveals that after he saw the applicant giving a blow of iron rod on the head of the victim, then held by one Chandar @ Mamu and victim Pawan Kumar thereafter fell on the ground, he was frightened and rushed to one Baljeet Singh from his village who was present nearby the tempo

parked at parking place. It reveals that thereafter said Baljeet Singh after hearing the matters reported by the witness, has advised him to rush back to his village otherwise the applicant would also kill him. Thus, considering the material in the said statement the same squarely explains the delay and/or reason for which he had not earlier approached the police.

5. Now considering the injuries revealed from the postmortem report on the backdrop that the eye witness has not seen the entire incident, no conclusion as canvassed by the learned counsel for the applicant can be drawn of there being of conflict/variance in the oral account of incident given by the eye witness and medical evidence collected by way of injuries noticed on corpse during the postmortem report.

6. With regard to submissions canvassed, the perusal of the statement of the witness Ram Dhore

who was working with a parking contractor, it reveals that on the relevant day, he had reported on duty at 21.00 hours. The material in the said statement does not reveal that he was present nearby the spot of incident when incident had occurred. Even the case regarding F.I.R. is also not different. The material in the statement of both the said witnesses does not reveal that they were present at the spot of incident when incident had occurred. Having regard to it, it is difficult to accept the submissions that since both of them were present near the spot and had not seen the incident makes claim staked by eye witness Parwan Singh vulnerable and or incredible.

7. Resultantly, considering the oral account of an incident as reveals from the statement of eye witness supported by the medical evidence i.e. nature of injuries sustained by the deceased, it is difficult to accept that any case is made for

considering the prayer for bail for an offence punishable with death or imprisonment for life. Additionally, the charge-sheet also reveals that at the behest of the applicant after his arrest, weapon of assault is recovered. Thus, there are no merits in the application. Application stands rejected.

8. After passing of the order, the learned counsel for the applicant has made request for expediting the trial. Request is objected by the learned APP on the ground that papers of investigation reveals that after the incident, the applicant was absconding and was required to be arrested from Shimla. Having regard to the said facet and having regard to the fact that the incident had occurred on 20th June, 2014 and pendency of cases, the request for expediting the trial is hereby rejected.

(P.D. KODE, J.)