

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 255 OF 2015**

Sekhar Shettiyar

...Applicant

Versus

The State (at the instance of
Borivli Police Station)

...Respondent

Mr. Milan Desai i/b Mr. T. R. Patel for the Applicant

Mr. Y. M. Nakhwa, A.P.P for the Respondent-State

PI Mr. Ashok Gajbhiye, I.O. then attached to Borivali Police Station is present

CORAM : REVATI MOHITE DERE, J.

TUESDAY, 17TH MARCH, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned A.P.P for the respondent-State.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 453 of 2013 registered with the Borivali Police Station for the alleged offences punishable under Sections 364, 302 r/w 34 of the Indian Penal Code.

3. The incident in question has taken place on the intervening night of 1st and 2nd October, 2013. It is alleged by the prosecution, that the deceased Laxman was the nephew of the applicant, who was collecting electricity rent from the hutments, at the instance of the applicant. It is alleged that as the deceased was not giving proper accounts, the applicant was enraged and had accordingly taken him to Dahisar, where he along with three others assaulted Laxman with weapons i.e. wooden sticks. It is alleged that after the assault by the applicant and three other co-accused, the applicant went to his friend's house, who is the complainant in the present case i.e. to the house of Sunil Mangaldas Bhanushali, where he disclosed to him of the assault by the present applicant and his three associates. Laxman (deceased) is alleged to have stated to the complainant that his Uncle i.e. the applicant along with three associates had brutally assaulted him sticks and bamboos on his head and that his Uncle was also going to kill one Nilesh Shetty. According to the complainant, when Laxman came to the room, he was in tremendous pain and was breathing heavily. Thereafter, the complainant informed the brother of the deceased and disclosed the same to him and asked him to come home. Accordingly, Madhav, the brother of the deceased came home and both took the

deceased Laxman to Orbit Hospital at Mira Road for treatment. After examining, the doctors advised that the deceased will have to be taken to the Bhagwati Hospital, Borivali, Mumbai, where he was declared dead.

4. Learned Counsel for the applicant contended that the applicant had no motive to cause the death of the deceased. He further submitted that there are discrepancies in the statements of the witnesses with regard to the reason and the actual assault by the applicant. According to him, the deceased was not working for the applicant and this is borne out by the statement of the deceased's brother Madhav.

5. Learned A.P.P opposed the bail application. He contended that it is nowhere stated in the statement of Madhav that he was not working for the applicant. He submitted that there is an oral dying declaration which has been immediately made to the complainant, Sunil Bhanushali with regard to the brutal assault by the applicant and three others on the deceased. He submitted that the applicant has antecedents, inasmuch as, there are 9 cases registered against him, mainly, body related offences, of the year 1997, 1998, 2001, 2002 and 2007. He submitted that six months

prior to the present case, while the applicant was in custody, the applicant's custody was sought by the Tamil Nadu Police. The learned Counsel for the applicant states that he is not aware of the said facts.

6. Perused the charge-sheet, the statements, the post mortem report. *Prima facie*, there is enough material as against the present applicant, particularly, the oral dying declaration made to the complainant. It also appears from the complaint, that there was motive for the applicant to assault the deceased. The statement of one of the witnesses which was recorded on 4th October, 2013 also indicates that the present applicant had assaulted the deceased along with the three other accused.

7. Learned Counsel for the applicant states that though an identification parade was held, the applicant has not been identified. The fact remains that there is an oral dying declaration which clearly implicates the present applicant and the complicity of the present applicant is writ large in the same. *Prima facie*, it appears that there was common intention to cause the death of the deceased. Apart from that, it also appears that there are several antecedents as against the applicant.

8. Taking into consideration the above facts, applicant's application for bail is rejected.

9. It is made clear, that the observations made herein are *prima facie* and the learned trial Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made herein by this Court.

REVATI MOHITE DERE, J.