

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI. BAIL APPLICATION No. 607 of 2015

Amol Gahinath Landge

..Applicant.

Versus

The State of Maharashtra
(C.R. No.I-64 of 2014)

..Respondent.

Mr Nitin Sejpal, Advocate a/with Mrs Pooja Sejpal for the
Applicant.

Mr D.P. Adsule, APP for the State.

CORAM : A. R. JOSHI, J.

DATE : 8th May, 2015

P.C.

1) Heard learned Counsel for the applicant. Also heard learned APP for the State. This is an application for regular bail in the matter of offences punishable under Sections 302, 397, 201, 120-B and also punishable under Section 34 of IPC.

2) According to the case of the prosecution, the victim was assaulted by the present applicant along with other three accused persons on 29th April, 2014 between 3:00 p.m. to 3:15 p.m. Report was lodged with the police regarding assault and murder of the victim by unknown assailants. It was so lodged on that night. During the investigation, statements of witnesses

were recorded and the present applicant along with other three accused persons was arrested on 1st May, 2014. Present applicant is named as accused No.2. Admittedly, there is no recovery at the instance of the present applicant. There is a recovery of knife and one gold chain at the instance of the co-accused who is accused no.1. Other accused Nos. 3 and 4 were granted bail by the Sessions Court. However, the bail application of the present applicant was rejected on various counts.

3) According to the case of the prosecution, there are supplementary statements of two eye-witnesses to the incident of assault and in the supplementary statements, these witnesses have mentioned that the present applicant-accused No.2 was one of the assailants. Apparently, this fact weighed with the Sessions Court while rejecting the application of bail of this applicant. The statement of these witnesses in the supplementary statements are required to be viewed in juxtaposition in their earlier statements initially recorded in which they have mentioned that the assailants were unknown to them and the assailants have masked their faces by handkerchief. Due to the fear of the assault on the victim these witnesses did not inform anything much immediately to the police and in their first statements they say that the assailants were unknown, however, they could be identified if shown

again. Admittedly, in the present case, there is no test identification parade and the present applicant was shown to the witnesses at the police station. As such, in the considered view of this Court, the said further statements of these witnesses are not to be considered as incriminating against the applicant so far as his involvement.

4) Another circumstance pointed out to the Court by the learned APP that the co-accused no.1 had made statement that he along with other applicant went to the shop of witness and from whom a knife was purchased few days prior to the incident. The learned APP also placed reliance on the statement of said shopkeeper and pointed out that the shopkeeper had identified the present applicant as the person who accompanied main accused no.1 for purchase of knife. Again, it must be mentioned that the said identification of the applicant by the shopkeeper is not in any test identification parade. Moreover, the statement prima facie imply that the applicant had accompanied the main accused for purchase of one knife and the link of that knife with the weapon of offence is still to be established. Moreover, the said knife was recovered at the instance of co-accused and not at the instance of the present applicant.

5) Fourthly, the learned APP submitted that there is a

statement of the wife of the present applicant wherein she had produced mobile handset of the applicant and call details record and the mobile tower location indicate that during the particular day and time of the incident the said mobile was within the range and near vicinity of the said spot. This circumstance, if to be considered as incriminating, even prima facie, then, it must be construed that the said mobile handset was in fact with the applicant at the relevant time and not with anybody else.

6) Further, it is told to the Court on behalf of the applicant that the Sim card in the said mobile handset is in fact in the name of the brother of the present applicant and not in the name of the applicant. In view of this factual position, even this circumstance as to production of the mobile handset by the wife of the applicant is not of any help to link the applicant with the said mobile handset.

7) Lastly, it is argued on behalf of the State that the son of the victim had given his statement after about 13 to 15 days of the incident, wherein he had stated that few days prior to the death of his father, he had seen the present applicant in the company of his father and also in the company of the other co-accused and that time all were drunk. In the said statement, it is further mentioned that the present applicant had a talk with the said son and told him to warn his father not to use any

gold chain henceforth. By pointing out this statement, it is argued on behalf of the State that the victim was assaulted and murdered and then the gold chain, he was then wearing, was stolen and as such the said statement of the son of the victim is of much significance. On this aspect, it is the factual position that the said gold chain is allegedly recovered at the instance of accused No.1 and not at the instance of the present applicant.

8) Considering the above circumstances, detailed by the prosecution, in the opinion of this Court the present applicant can be released on bail during the pendency of the case. Now, the only question remains whether the applicant will be available for trial and whether there is any possibility of he tampering with the prosecution witnesses. On this count, certain conditions can be imposed on the applicant and hence the present application is allowed with following order:-

ORDER

- (a) The bail application is allowed;
- (b) The applicant be released on bail on his executing a P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two sureties for the like amount;

(c) After availing the bail, the applicant shall attend the concerned Police Station on first Monday of each month between 10.00 a.m. to 12.00 noon, till conclusion of the trial;

(d) The applicant shall not, directly or indirectly, tamper with the prosecution witnesses in any manner;

(e) Bail before the trial Court;

(f) Needless to mention that the observations in the present order are in the prima facie nature and the Trial Court shall not be influenced by any of the observations in this order at the time of final adjudication of the matter.

9) With the above directions, bail application is disposed of.

(A. R. JOSHI, J.)