

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.768 OF 2015

Akshay Vilas Chavan

... Applicant

Vs.

The State of Maharashtra

... Respondent

Mr.A.P.Mundargi, Sr.Adv. i/b A.B. Thorat for the Applicant

Mr.Arfa Sait, APP, for Respondent – State

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **JULY 21, 2015**

P.C.:

1. The application is moved for bail as the applicant/accused was arrested on 27.12.2014 for the offences punishable under sections 302, 201, 324, 323, 504, 143, 147, 149 r/w section 34 of the Indian Penal Code at C.R. No.237 of 2014 registered with the Dehu Road police station, Pune. One Manoj @ Dingrya Phulchand Dhakoliya gave information to the police on 7.11.2014 of murder of one Ruplal @ Deepak Suresh Bhil pursuant to which the offence was registered. It is the case of the prosecution that the applicant/accused Akshay Chavan alongwith his other friends on 6.11.2014 at about 10.30pm, were abusing and shouting loudly near Ramabai Nagar Zopadpatti, Ravet, Dist.Pune. At that time, the complainant alongwith the deceased Ruplal told them not to shout and fight and requested them to go away from the place. At that time, one co-

accused Hanumant Shinde told that they would be leaving and then, the deceased Ruplal put hand on the shoulder on one of the witnesses Rekha. This flared up the verbal altercations between Hanumant Shinde and the deceased Ruplal. The co-accused and the applicant/accused thereafter started assaulting Ruplal with kicks and fist blows. The complainant rescued Ruplal and Rekha and then he was proceeding towards his house. However, at that time, all the accused including the applicant/accused again attacked Ruplal. The complainant was also assaulted. At that time, the present applicant instigated others that Ruplal is to be assaulted and he is to be eliminated. Thereafter, Vinod Gaikwad took stone and assaulted on the head and face. Ruplal succumbed to the injuries and thereafter on the next day, early morning, the offence was registered against the accused.

2. The learned Senior Counsel for the applicant/accused has submitted that the role attributed to the applicant is of assaulting the deceased with kicks and fist blows and as per the case of the prosecution witnesses he uttered the words 'let us murder Ruplal and let us not keep him alive'. Thereafter, Vinod Gaikwad assaulted him. The learned Senior Counsel read over the statements of the eye witnesses. He pointed out that in the statements of Susheela and Roy D'souza, who claim to be eye witnesses, there is no mention of such utterances by the applicants/accused. Therefore, the benefit of this contradiction is to be

given at this stage to the applicants/accused. He submitted that the deceased as per the post mortem report died due to the head injury alongwith blunt trauma to abdomen. He submitted that the main cause for death was assault with stone which was attributed to Vinod and not the applicant. He submitted that under such circumstances, he is to be given the benefit and released on bail.

3. The learned Prosecutor submitted that it is not a case of bail. The applicant/accused has uttered these words and instigated the co-accused to assault the deceased. He further submitted that besides this offence, two cases – one filed in 2013 under section 323 and the other filed in 2014 under section 307 of the Indian Penal Code are pending against the applicant/accused. He submitted that under such circumstances, if at all he is released on bail, he is likely to commit another offence of similar nature.

4. Perused the FIR, statements of the witnesses which are pointed out by the learned Senior Counsel. Though there is inconsistency between the statements of eye witnesses and the complainant in respect of the utterances instigating the others to assault and eliminate the deceased Ruplal, at this stage of bail, the Court has to take into account the evidence which is present against the applicant/accused. There is every possibility that these utterances might not have been heard by some of the

witnesses. However, the three witnesses have stated about these utterances. The cause of death is not only head injury but it is a head injury associated with blunt trauma to abdomen and there is evidence of the witnesses that the applicant/accused assaulted the deceased with kicks and fist blows. There are 12 injuries of the nature of contusion on the body of the deceased. Moreover, two cases are pending against the applicant/accused and offences committed in both the cases are against human body.

5. Under these circumstances, I am not inclined to grant bail. Bail application is accordingly rejected.

(MRS.MRIDULA BHATKAR, J.)