

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2076 OF 2014

Naresh Chandrakant Kotiwale ...Applicant
vs.
State of Maharashtra ...Respondent

Mrs. Anjali Patil, Advocate for the Applicant.
Mrs. R.A. Ambekar, APP for the State.

CORAM : P.D. KODE, J.

DATE : JANUARY 12, 2015

P.C.

. The learned APP opted to argue the matter on the basis of charge-sheet annexed in view of absence of investigating officer.

2. By this application applicant/accused No.5 in a charge-sheet submitted by Ghatkopar police station against him and six more accused for commission of the offences punishable under Sections 302, 143, 147, 148, 149, 323 and 427 of

Indian Penal Code in prosecution of common object to commit murder of one Ganesh has prayed for bail.

3. The prayer for bail is objected by the learned APP on the ground that the involvement of the applicant is borne from the F.I.R. as well as from the statements of six eye witnesses namely Shyam Aagale, Babu Puram, Sameer Padi, Dharmesh, Amol Kadam and Hussain Memon. It is her submission that the statements of other eye witnesses also reveals overact committed by the applicant of assaulting the deceased Ganesh by means of spanner. Learned APP contended that the said material denotes that the applicant was acting in furtherance of common object of unlawful assembly to commit murder of said Ganesh, his prayer for bail be negatived.

4. The learned counsel for the applicant has pressed the prayer for bail by submitting that earlier most statement of eye witness recorded on

21-05-2013 i.e. of Babu Jilhapuram reveals that it was a sudden incident occurred when the first informant, deceased and Shyam Aagale came across on the road. It is submitted that the account of incident as revealed from the F.I.R. as well as of the other eye witnesses reveals that charge-sheeted accused Nos.1 and 2 were main culprits of the incident. It is her submission that the said account of incident or the other material does not lead to a *prima facie* conclusion of the applicant being aware that the said main assailant or the charge-sheeted accused No.6 were possessing weapons. It is submitted that prosecution has not collected any material during the course of investigation *prima facie* revealing that the applicant was aware that the said two accused i.e. charge-sheeted accused Nos.1 and 6 were possessing knife. It is urged that the applicant has been saddled with this case only on the ground of himself having accompanied the said main assailant.

5. It is urged that it is debatable whether the applicant had committed any overact as no overact committed by him is spelt out from the F.I.R. It is submitted that apart from it even accepting the prosecution allegation of the applicant having used weapon i.e. spanner, the account of assault does not reveal that the said spanner has caused any injury on vital part much less on any part or even some other material collected during the course of investigation for supporting the said allegation i.e. the material in the shape of recovery.

6. The learned counsel thus contended that even accepting that the applicant was accompanying the other accused, there is paucity of material denoting that the applicant was entertaining a common object as canvassed by the prosecution. It is submitted that there is also paucity of the material to come to a conclusion that the applicant

was knowing that the weapon like knife was to be used in the said incident. The learned counsel contended thus considering the material as available against the applicant, he can not be said to be entertaining or sharing a common object to commit murder of the deceased. It is submitted that even giving concession to the prosecution, the said material would not transcend beyond the applicant entertaining a common object of assaulting the deceased.

7. It is further submitted that there is paucity of material in the charge-sheet of the applicant possessing a motive to kill the deceased. The learned counsel for the applicant thus contended that the case of the applicant stands on much lower pedestal than the other accused who had assaulted the deceased and the injuries caused by them to the deceased resulting in his death.

8. The careful perusal of the material in the

charge-sheet *prima facie* supports the submissions canvassed. The role played by the applicant is not denoting in an F.I.R. and the same apparently reveals from the statement of Babu and the statements of other witnesses. Even the said account does not reveal that the applicant was armed with a weapon which could have caused the injuries and/or the one which is resulted in the death of the deceased. Apparently there is absence of material denoting that the applicant was aware of his companion being armed with lethal weapon like knife. The material in the charge-sheet also supports the submission of learned counsel that it was a sudden incident occurred when the parties have came across on the road.

9. Having regard to the aforesaid and due to paucity of material denoting that the applicant was entertaining a common object to kill the deceased or at least the same being a very much debatable

question, the prayer for bail will deserve consideration. However, considering the rivalry between the parties, it appears appropriate to impose certain strict conditions while entertaining the prayer for bail.

10. Resultantly, the application is allowed. Applicant is directed to be released on bail in connection with aforesaid crime upon furnishing P.R. Bond in sum of Rs. 1,00,000/- (One Lac) with one or two sureties to make like amount and subject to conditions that after release the applicant shall (a) stay outside the area of Greater Bombay and shall not enter the same at any point of time save except obtaining leave from this Court. However, the applicant is permitted to enter the area of Bombay for the purpose of attending dates fixed in a case against him, (b) inform his place of abode to the investigating officer and shall attend the local police station of the said area on

every alternate Monday for a period of three months and thereafter on every Monday until further order, (c) not indulge in any activity of tampering the prosecution evidence and/or not indulge in any activity of coercing, threatening and pressuring the prosecution witnesses and (d) not misuse the protection granted by this order for fleeing away or for any other oblique purpose.

Application stands disposed of.

(P.D. KODE, J.)