

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.2085 OF 2015

Divesh Prakash Aware

...Applicant

Versus

The Inspector of police,
Trimbakeshwar Police Station & Anr.

...Respondents

.....

Mr. Rizwan Merchant with Mr. Swapnil Wagh & Mr. Mahesh
Ahire for the Applicant.

Mr. S.S. Pednekar, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 17th NOVEMBER, 2015.

P. C. :

By this application the Applicant herein who is an accused in C.R. No.I-17 of 2015 registered with Tryambakeshwar Police station, Nashik, for the offences punishable under section 302 r/w. section 34 of the IPC and section 4 (25) of the Arms Act, has sought bail.

2. Heard the learned counsel for the Applicant and the learned APP for the State.

3. The learned counsel for the Applicant submits that the accused Nos.2 and 3 are already on bail. He has further submitted that

charge-sheet is already filed and presence of the Applicant is not required in the custody. It is further stated that opinion given by the Medical Officer reveals that the injuries sustained by the deceased could be caused by a double edged weapon. The weapon allegedly recovered from the Applicant is not a double edged weapon and hence the medical opinion does not corroborates the prosecution story. There is considerable delay in recording the statement of the eye witness. Furthermore, C.C.T.V. footage does not show that the Applicant was holding a knife in his hand. He has stated that the Applicant is a student of 22 years of age.

4. The learned APP submitted that there are eye witnesses to the incident, who have specifically stated that the Applicant herein was involved in inflicting injury on the deceased Ravindra Borse. The learned APP further stated that the Applicant herein was earlier involved in similar case and that the Crime No.28 of 2014 for offence punishable under section 307 of the IPC has been registered against him by Gangapur police station. The learned APP further submits that the Applicant is not entitled for bail.

5. At the outset it may be mentioned that though the accused Nos.2 and 3 have been released on bail, a perusal of order dated 18th

April, 2015 passed by the Additional Sessions Judge-4, Nashik, in Criminal Miscellaneous Application No.379 of 2015 reveals that the said co-accused, were released on bail as there was no evidence to show their involvement in the said incident. In the instant case, the statement of the eye witness prima facie reveals that the Applicant was armed with a knife and that he had inflicted the injury on the deceased. Hence, the Applicant is not entitled to be released on the ground of parity.

6. The post mortem report prima facie reveals that injuries there were incised stab wounds on the left side of chest and on the right side of the abdomen. The medical opinion reveals that the death was due to hemorrhagic shock due to stab injuries on the left side of chest and right side of the abdomen near right groin area. The material on record thus, prima facie reveals that the Applicant is involved in commission of offence punishable under section 302 of the IPC.

7. The offence is of serious nature. The Applicant has criminal antecedents as it is seen that he is involved in Crime No.28 of 2014 under section 307 of the IPC registered with Gangapur police

station. The charge-sheet has been filed. The eye witnesses, who are also the students of the same college are yet to be examined. The Possibility of the Applicant interfering with or influencing these witnesses cannot be ruled out. Considering the totality of the facts, in my considered view, the Applicant is not entitled for bail. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)