

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.2540 OF 2014

Laxman Raju Sannaki @Bappa

Sannaki

... Applicant

Vs.

The State of Maharashtra

.... Respondent

Mr. Jaysingh G. Bhanushali & Mr. Vinay Bhanushali for the Applicant.

Mrs. A.A. Mane, APP, for the Respondent-State.

Mr. D.R. Ganore, P.I. (I.O.), present.

CORAM: P.D. KODE, J.

DATED: JANUARY 12, 2015.

PC:

1. At the hearing of this application, learned APP opted to argue the matter on the basis of charge-sheet rather than filing a say.
2. By this application, accused No.4 in the charge-sheet submitted by Meghwadi Police Station against the Applicant and seven more accused for commission of offences under sections 307, 302, 452, 323 and 120-B r/w section 34 of the IPC has prayed for bail.
3. The police has accordingly charge-sheeted the Applicant as a result of investigation of Crime No.42 of 2014 registered with said police station upon FIR of an employee of deceased Rajesh @Raju Datta Arshid regarding an incident which had occurred between 20.00 to

20.15 hours in which four people had been to the shop of the deceased and out of them, one had asked the deceased to come out of the shop and upon the deceased desisting to do so had assaulted him by means of a chopper (*Koyta*), as a result of which the deceased had sustained one injury and later on due to said injury, he succumbed to death.

4. The perusal of the charge-sheet reveals the case of the prosecution to the effect that charge-sheeted accused Nos.1 and 2 were enraged due to the deceased having failed to give them a shop from Developer in respect of his stall seized by the B.M.C., had entered into a criminal conspiracy and at say of charge-sheeted accused No.1 the Applicant and charge-sheeted accused Nos.5, 6 and 9 had entered in said shop on the relevant day for assaulting him and upon the deceased having declined to come out, as told by charge-sheeted accused No.4, accused No.5 had assaulted him by means of a chopper(*koyta*).

5. Learned APP objected the prayer for bail on the ground that involvement of the Applicant is clearly borne from the statement of two eye-witnesses viz, Siddharth Shetye and Jitendra Shankar Shankulkar. It is submitted that statements of both the witnesses reveal at least that of Siddharth- that the Applicant alongwith charge-sheeted accused Nos.5, 6 and 9 had been to said shop. It is submitted that since the Applicant had accompanied said accused since the beginning, he is

equally responsible for the act committed by the charge-sheeted accused No.5 of assaulting the deceased and causing him injury, which resulted into his death. It is submitted that act of the Applicant accompanying the other charge-sheeted accused itself reveals that said attack was committed in pursuance to the conspiracy to which the Applicant was a party. The learned APP submitted that since the death has been ensued due to the acts committed by one of the co-conspirator in achieving the object of the said conspiracy, the prayer for bail be negated.

6. Mr. Jaysingh Bhanushali, learned counsel for the Applicant, submitted that involvement of the Applicant in the said incident i.e. himself accompanying accused Nos.5, 6 & 9 while going to said shop, rests upon the slender material contained in the statement of witness Siddharth Shetye. It is submitted that even the material in the said statement does not clearly describe the Applicant and the reference therein is restricted to the name of one Bappa. It is submitted that the prosecution has failed to establish the identity of the Applicant as being said Bappa. The said witness as well as the other eye-witnesses have failed to identify the Applicant at T.I. Parade as Bappa. It is further submitted that hence the Applicant is entitled for bail. It is urged that even assuming that the Applicant was said Bappa, still beyond the Applicant going to the said shop no other material is found in the

charge-sheet denoting that he was member of the criminal conspiracy entertaining an object of committing murder of the deceased. It is thus, urged that in view of the material against the Applicant being incredible and the Applicant having not committed any act for coming to the conclusion that he was entertaining into common object or even intention alongwith charge-sheeted accused No.5 to kill the deceased on said date, he is entitled for bail. It is submitted that merely because the Applicant had accompanied the co-accused, who was having some weapon at his chest the same by itself would not lead to the conclusion that he was aware that on the relevant date and time said co-accused was to assault and murder the deceased.

7. The perusal of the charge-sheet prima facie supports the submission canvassed by learned counsel for the Applicant. Hardly any material has been seen in the charge-sheet prima facie establishing the identity of the said Bappa as the Applicant. Apart from it, the charge-sheet does not contain any other material denoting involvement of the Applicant in the conspiracy to commit the murder of Rajesh @Raju Datta Arshid. In such a state of affairs, the discretion deserves to be exercised in favour of grant of bail. However, considering the nature of the offences committed and the conspiracy alleged, it appears proper to insist for heavy bail and to impose strict conditions.

8. Resultantly, the application is allowed. The Applicant is directed to be released on bail in C.R. No. 42 of 2014 of Meghwadi Police Station, on furnishing PR. Bond in the sum of Rs.2,00,000/- (Rupees Two Lakhs only) with one or more sureties to make up like amount and subject to conditions that after his release the Applicant shall (i) not enter within the area under Jogeshwari Police Station; (ii) Shall inform the place of abode to the I.O. and shall attend the I.O. of the local police station for the said area on every Monday and Thursday in between 4.00 p.m. to 6.00 p.m. until further orders; (iii) not indulge in activity of tampering, threatening, coercing, intimidating or pressurizing the prosecution witnesses in any manner; and (iv) not misuse the bail granted vide this order for fleeing away or for committing any further offence.

6. All the observations made herein above being only for the purposes of deciding the merit in the prayer for bail, nothing therein should be construed as a final opinion expressed by this Court regarding merits of the case.

7. The application accordingly stands disposed of.

(P.D. KODE, J.)