

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO. 2610 OF 2014

Sivam Vinay Singh ... Applicant
Vs.
The State of Maharashtra Respondent

Ms Pooja Bhojane for the Applicant
Mrs. Rutuja Ambekar, APP, for the Respondent- State.

CORAM: P.D. KODE, J.

DATED: JANUARY 8, 2015.

PC:

1. By this application accused No.1 charge-sheeted by Mumbra Police Station in Crime No.I-482 of 2014 for the offences under sections 302, 201 and 34 of the IPC has prayed for bail. The said accused is charge-sheeted accordingly on the count of himself in furtherance of his common intention with charge-sheeted accused No.2 having assaulted Jitesh Amberkar on 9.6.2014 and having committed his murder.

2. The perusal of the charge-sheet reveals that report of the incident was lodged by one Police Hawaldar after noticing that corpse of deceased was lying in a compound. It reveals that during the course of investigation police had recorded statement of three eye witnesses viz;
1) Shirkant Ashok Chaudhary, 2) Ravsaheb Patil and 3) Harish Balkrushn Chavan.

3. Learned counsel for the Applicant pressed the prayer for bail on the ground that the account of incident as disclosed from the statement of eye witnesses reveals that it was not a pre-planned incident but it has emerged out of a sudden quarrel which had ensued due to the deceased /stranger having intruded in a birthday party and commenced dancing with the invitees. Learned counsel for the Applicant canvassed that account of incident reveals that Applicant as well as co-accused were not armed with the weapon since the beginning and after being enraged due to quarrel ensued they had been to a lane and brought weapons. The learned counsel thereafter by inviting attention to the *post mortem* notes submitted that it reveals that the death had ensued due to chop injury sustained by the deceased on head. It is her submission that the Applicant being not armed with a weapon capable of causing such an injury and being armed only with iron rod, *prima facie* he cannot be held responsible for causing injury which has resulted into the death. It is urged that considering the manner in which the incident had suddenly occurred the applicability of section 34 of the IPC would be a debatable question.

4. Learned APP opposed the application by submitting that the deceased has sustained as many as 11 injuries. It is her submission that the act of the Applicant and the co-accused coming to the lane and getting armed with weapon reveals that they were aware about the act

to be committed by them and as such the Applicant is also responsible for the death ensued in the process of assault which was jointly made by them upon a deceased.

5. The perusal of the charge-sheet and the statements of eye witnesses in support of submissions canvassed by the learned counsel for the Applicant to the extent of the Applicant being not armed with a weapon since the beginning, the incident being outcome of a sudden quarrel occurred for the reasons canvassed, the death being having occurred due to head injury sustained and not by the injuries which were capable to be caused by means of weapon possessed by the Applicant.

6. Thus, taking the overall view of the account of incident it is *prima facie* difficult to accept that the Applicant was main assailant and /or was entertaining an intention to kill the deceased. There is also substance in the submission canvassed that in the facts and circumstances of the crime offence occurred at the hands of the Applicant may not transcend beyond the offence under section 304 of the IPC. Having regard to it discretion deserves to be exercised in favour of granting bail, as the facts and circumstances of crime also does not reveal that the Applicant having acted in an unduly cruel manner.

5. Resultantly, the application is allowed. The Applicant is directed to be released on bail in C.R. No.I-482 of 2014 of Mumbra

Police Station, on furnishing PR. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh only) with one or more sureties to make up like amount and subject to conditions that after his release the Applicant shall (i) stay at the address mentioned in the application and shall not change the same without permission of the Court; (ii) attend the I.O. on every Monday for a period of one month and thereafter on alternate Monday in between 11:00 a.m. to 1:00 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 protection granted vide this order for fleeing away or for committing any further offence.

6. The application accordingly stands disposed of.

(P.D. KODE, J.)