

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.2722 OF 2014

Vishal Shantaram Haldankar ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. P.K. Waghmare for the Applicant
Mrs. G.P. Mulekar, APP, for the Respondent -State.
Mr. Mhatre, PSI, Sakinaka Police Station.

CORAM: P.D. KODE, J.

DATED: JANUARY 23, 2015.

PC:

1. Heard. The prayer for bail made by the Applicant charge-sheeted alongwith one more accused by Sakinaka police station for, in furtherance of their common intention, having murdered of one Santosh Jawir is objected by learned APP on the count of the deceased having died due to the assault made by the Applicant alongwith the charge-sheeted co-accused. It is contended that the material in the charge-sheet reveals that the deceased was attacked by the Applicant and co-accused. It is submitted that, hence, prima facie, there is material regarding involvement of the Applicant in commission of offence of murder.

2. A perusal of the charge-sheet, and particularly the

statement of four eye witnesses viz. 1) Dheeraj Amarnath Yadav 2) Umesh Yadav 3) Rakesh Ashok Kumar Mishra and of one more witness viz. Kamlesh Katoch though reveals that, on suspicion of the deceased having stolen Mobile the Applicant and co-accused had assaulted him, the said material does not reveal that any weapon was used during said assault. Said material prima facie does not reveal any circumstance for jumping to the conclusion that while assaulting, the Applicant was entertaining an intention to cause death of the deceased.

3. Furthermore, the absence of weapon for attacking him also militates prima facie against the Applicant entertaining an intention to cause bodily injury likely to cause death or bodily injury sufficient under ordinary course of nature to cause death. Even after taking into account the injury sustained by the deceased, it also appears to be a debatable one that the Applicant and the co-accused had knowledge that by said act they were likely to cause death. Thus, considering overall account of incident as emerging from the material in the charge-sheet it appears to be highly debatable whether the Applicant can be said to be involved in offence of commission of murder. Learned counsel for the Applicant urged that considering the reason behind the assault, the manner of assault and the fact that the assault was not stopped due to gathering that deceased was dead but was stopped at an intermediate stage when

the deceased had become unconscious the offence may not be transcend beyond the offence under section 304 of the IPC and also prima facie cannot be said to be de hors merit. Thus considering all the pros and cons connected with the crime in question, discretion deserves to be exercised in favour of grant of bail.

Resultantly, the application is allowed. The Applicant is directed to be released on bail in C.R. No.339 of 2014 registered with Sakinaka Police Station, on furnishing the P. R. 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 of every month for a period of one month and thereafter alternate Monday of every Month in between 11:00 a.m. to 1:00 p.m. until further order; (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. The application accordingly stands disposed of.

(P.D. KODE, J.)