

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 130 OF 2016

Gullu Vali Mohd Sajida	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Prashant G. Pandey, Advocate for the applicant.
Ms. Rutuja Ambekar, APP for the State.
Mr. Sanjay M. Jadhav, P.S.I., Dindoshi Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **23rd March, 2016.**

P.C.:

This Application is moved for bail, as the applicant/accused is facing charges under sections 302, 324, 323, 506(2), 143, 144, 147, 148, 149, 201 of the Indian Penal Code and under sections 4 and 27 of the Indian Arms Act. One Rajesh Jadhav gave information to the police on 21st October, 2014 of the murder of his brother Ramesh and the offence is registered at C.R. No. 497 of 2014 with Dindoshi Police Station, Mumbai.

2. It is the case of the prosecution that the applicant/accused along with his family are residing at Khot Dongiri, Malad, Mumbai. The family members of the accused used to pick up quarrel with the persons in the vicinity. On 21st October, 2014, a quarrel took place between co-accused Sohail and one Hitesh Trivedi. They had verbal altercations and they manhandled each other. At that time, the family members of Hitesh and

family members of complainant gathered. Co-accused Sohail also called his relatives and family members. The family members of accused started beating Hitesh Trivedi and Rajesh Jadhav, who intervened and tried to solve the quarrel. However, Rajesh Jadhav was beaten up by co-accused. Ramesh Jadhav, brother of complainant Rajesh Jadhav arrived there and he also intervened. At that time, the applicant/accused arrived there with gupti and assaulted him on his thigh. He cried for help. However, Sohail and Shahrukh threatened others and started assaulting Ramesh with sword and bamboo. Ramesh fell down. The accused persons threatened the public who gathered there by showing the weapon and told them not to come forward and interfere. Ramesh was shifted to the hospital and was declared dead. The applicant/accused was arrested on 22nd October, 2014 since then he is in prison. Hence this Bail Application.

3. The learned counsel for the applicant/accused has submitted that the role attributed to the applicant/accused is false. The applicant/accused has not committed any offence. Assuming the case of the prosecution, the role attributed to the applicant/accused is that he pierced gupti in the thigh of deceased Ramesh, however, it cannot be a fatal blow. He further submitted that panchnama drawn under section 27 of the Evidence Act is also bogus. He pointed out that the statements of eye witnesses are recorded in a

stereotype manner, this shows that the prosecution has falsely implicated the applicant/accused. He further submitted that the applicant/accused is only bread earner in his family. He has small children who are dependent on him. He further submitted that because of death of Ramesh, on the next day, i.e., 22nd October, 2014, 5 houses in the vicinity were burnt and there is terror in the locality. He further submitted that one of the accused Shahrukh is granted bail and, therefore, this applicant/accused is also to be released on bail.

4. Learned APP relied on the statements of the witnesses. She pointed out that there are eye witnesses. She also relied on postmortem report of the deceased. She submitted that the applicant/accused is attributed a specific role. The applicant/accused is having a criminal record, as 7 cases are registered against the applicant/accused, out of which, in 5 cases he is acquitted. He further submitted that if at all the applicant/accused is released on bail, it will lead to law and order problem.

5. Perused the FIR, statements of the eye witness, postmortem report and panchnama. Deceased Ramesh died on the spot. The postmortem report shows that there is perforating wound on his left thigh. Eye witness complainant Rajesh Jadhav and other eye witnesses Hitesh Yashwant

Trivedi, Daya Yashwant Trivedi, Jayesh Yashwant Trivedi, Sai Sanjay Jadhav have stated that the applicant/accused was present on the spot and he assaulted Ramesh with gupti on his left thigh. The submissions of learned counsel for the applicant/accused that the applicant/accused was not the one who gave a fatal blow to Ramesh may be appreciated at the time of trial, however, at this stage, the Court considers that this is a case where Section 34 is applied. All the accused have gathered together and were armed with weapons. They all attacked Ramesh and also threatened other persons who came forward to help Ramesh. The complainant was injured. The presence of other eye witnesses at this stage cannot be doubted.

6. The learned counsel for the applicant/accused has rightly pointed out that the statements of eye witnesses are stereotype and they are ditto in sentence, words and even full stop. I take serious note of such type of investigation at this stage. This shows that Investigating officer was cavalier and was not diligent while recording the statements of the witnesses under Section 161 of Cr. P.C. This fact will be dealt with by the learned Sessions Judge at the time of trial, however, at this stage, recording of such kind of statements cannot create doubt in the mind that eye witnesses were not present at the time of the incident. It can only show

that the Investigating officer did not bother to record statements of the witnesses separately but used method of copy-paste. It is a case of murder and investigation is required to be honest, careful and diligent. Considering the role attributed to the applicant/accused and the manner in which terror was created, I am not inclined to grant bail. The trial Court may endeavour to start with the trial and try to complete the trial within one year. The Application for bail is rejected.

7. The copy of this order is to be sent to the Commissioner of Police, Mumbai.

(MRIDULA BHATKAR, J.)