

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.217 OF 2016

Raju Dhondiba Pawar & Anr.	...	Applicants
Vs.		
The State of Maharashtra	...	Respondent

Mr. Priyal G. Sarda, Adv. for the applicants.
Mrs. G.P. Mulekar, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 5th February, 2016.

P.C. :

1. This is an application for bail filed by the aforesaid applicants who are facing trial in Sessions Case No.397 of 2015 pending on the file of Addl. Sessions Judge, Pune. The said case arises out of C.R.No.167 of 2015 registered with Pimpri Police Station for the offence under Section 143, 147, 148, 302 r/w. 149 of IPC and Section 37(i), 135 of B.P.Act and Section 4, 25 of Arms Act.

2. The case of the prosecution in brief is that on 13.3.2015 during late night hours some unknown persons had assaulted Mahesh Kamble and had thereby caused his death. The parents of the deceased had suspected that the applicant herein was involved in the crime. Based on the said supplementary statement, the applicants

were arrested. Upon completion of investigation, chargesheet was filed and the case was committed to the Sessions Court, Pune. The applicant had filed application for bail before the Sessions Judge, which was rejected vide order dated 30th January, 2016. Hence the present application.

3. Shri Sarda, learned Counsel for the applicants submits that there is neither direct nor circumstantial evidence to link the applicants with the said crime. He further submitted that the applicants are in custody since 15th March, 2015 and 16th March, 2015 without there being any prima facie material to show the involvement of the applicants in the said crime. He therefore claims that the applicants are entitled to be released on bail.

4. Mrs. Mulekar, the learned APP for the State has submitted that material on record prima facie indicate that the applicants and the deceased were involved in committing petty thefts and that there was dispute between them on the count of sharing the stolen cash and mobile. She has further submitted that the statements of the parents of the deceased prima facie show the involvement of the applicants in the said crime. She has further stated that the offence is of serious

nature and hence the applicants are not entitled for bail.

5. I have perused the record and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State.

6. The record prima facie reveals that Shri Tuljaram Yamanappa Kamble lodged the FIR dated 13.3.2015 alleging that on the same night at about 3 a.m. one Nithin Shinde had informed him that his son Mahesh was assaulted by someone and he was lying in unconscious state near the garage of Mahendra company. The complainant proceeded to the scene of offence and found that his son Mahesh was lying in pool of blood in front of the said garage. He was taken to YCM hospital and was declared dead.

7. The statement of the complainant does not indicate that he had witnessed the incident. His supplementary statement was recorded on 14.3.2015 wherein he had stated that on 12.3.2015 at about 11.00 a.m. his son Mahesh and his friend Deepak and Sudhir Jedhe had snatched one mobile phone and cash from one person near Mahendra Company and that they had assaulted the said person. The

said stolen mobile and cash was with Mahesh and that he had not given any money to his friends Sudhir Jedhe and the applicant Raju Pawar and the other associates. He therefore suspected that the applicants and the other persons involved in snatching the mobile had committed murder of his son. Similar statements are made by the other family members of the deceased.

8. It is to be noted that neither the complainant nor the family members had witnessed the incident. They have implicated the applicants only on the basis of suspicion. Needless to state that mere suspicion cannot be a ground to detain the applicants behind bars. There is no other prima facie material, either direct or circumstantial to indicate that the applicants herein were involved in assaulting Mahesh.

9. Under the circumstances, the applicants are granted bail on the following terms and conditions:

- i) The applicants be released on bail on furnishing bail bond of Rs.25,000/(Rupees Twenty five Thousand Only) each with one solvent surety in the like amount to the satisfaction of the

learned Addl. Sessions Judge, Pune.

- ii) The applicants shall not interfere with the complainant or the family members of the complainant or any other witnesses in any manner.
- iii) The applicants shall appear before the Sessions Court on each and every date of hearing, or as and when directed by the Sessions Court.

(ANUJA PRABHUDESSAI, J.)