

THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.243 OF 2016

MAHESH GANPATI NITURE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Shri Ravindra Pachundkar a/w. Shri Prithpal Singh Nahal,
Advocate for the Applicant.

Smt.R.M.Gadhvi, APP for the Respondent - State.

CORAM : A. M. BADAR

DATE : 24th JUNE 2016.

P.C. :

1 Applicant / accused in Crime No.141 of 2012 registered with Police Station Bhosari at the instance of Bhima Kothimbire by this application for the offences punishable under Sections 302, 341 read with Section 34 of the IPC and under Sections 37 and 135 of the Maharashtra Police Act as well as under Sections 4(25) of the Arms Act is seeking his release during pendency of the Sessions Case No.711 of 2012.

2 Heard learned counsel for the applicant. He argued that informant Kothimbire has stated the motive for the offence as staring whereas three friends of the deceased have stated the motive as quarrel. He further argued that three friends of the deceased were sitting at a distance of 400 mts. and it is highly improbable for them to run on the spot and to witness the incident. Test Identification Parade (TIP) of Jitendra Pandit – watchman is not conducted. Applicant is behind bar since long and is student of engineering with no criminal antecedents.

3 Learned APP opposes the application.

4 Incident of murder of Sanket Kothimbire occurred at about midnight of the night intervening 17th May 2012 and 18th May 2012 near Shivam Industries, Shastri Nagar, Pune. Incident was witnessed by three eye witnesses who are friends of deceased Sanket. Statement of these three eye witnesses namely Ramesh, Rohit and Ajay goes to show that present applicant along with co-accused had assaulted Sanket by means of sharp edged weapon.

They also attributed motive to accused persons for committing this offence. Evidentiary value of version of these three witnesses is required to be evaluated after recording their evidence, and therefore, at this stage, it cannot be inferred that they being friends are telling a lie and that it was not possible for them to witness the incident. When eye witness account is there, motive hardly matters, and therefore, so called variance in the motive attributed is of no consequence. Similarly, as Jitendra Pandit was not acquainted with either deceased or assailants and as there are eye witnesses to the incident in question, non-holding of TIP is of no consequence.

5 Postmortem report shows that deceased was done to death in most brutal manner.

6 The offence being punishable with life imprisonment or death, no case for bail is made out.

7 Application is rejected.

(A. M. BADAR, J.)