

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.431 OF 2016

IN

CRIMINAL APPEAL NO. 1017 OF 2013

Balaji @ Bala Gopal Sukunde

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Prabhanjay R. Dave for the Applicant.

Mr. H.J. Dedia, APP for the Respondent -State.

**CORAM: SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 12th APRIL, 2016.

ORAL ORDER [PER SMT. ANUJA PRABHUDESSAI, J]:-

This is an application for bail filed by the aforesaid Applicant, who is an accused No.1 in Sessions Case No.723 of 2011 arising out of C.R. No.220 of 2011 registered at Oshiwara Police Station, Mumbai, for an offence punishable under section 302 r/w. 34 of the Indian Penal Code.

2. We have perused the records and considered the submissions advanced by Mr. Prabhanjan Dave, learned counsel for the Applicant and Mr. H.J. Dedia, learned APP for the Respondent-State.

3. The Applicant herein has been held guilty of committing murder of Rangeela on 19.4.2011 at about 11.00 p.m. to 11.30 p.m. The case of the prosecution is based on the testimony of two eye witnesses viz. PW-1 and PW-7 in addition to circumstantial evidence viz. medical evidence and evidence of recovery of weapon and blood stained cloth at the instance of the accused.

4. The testimony of PW-1 Balbeersingh reveals that he knew the Applicant as well as the deceased. His testimony reveals that on the date of the incident at about 11.00 p.m. to 11.30 p.m. he had seen the Applicant as well as the co-accused and one more person carrying Rangeela and throwing him on the ground. He has stated that Rangeela had sustained bleeding injuries. His testimony indicates that Rangeela had questioned the Applicant as to why they were assaulting him. He has stated that the co-accused Pintya had removed a knife from pocket and stabbed Rangeela. Thereafter the Applicant as well as co-accused ran away from the place of the incident. The testimony of this witness prima facie proves the involvement of the Applicant in the said crime. The material on record indicates that this witness had lodged a FIR on the same date. It is true that he had not disclosed the name of the Applicant and the co-accused in the said FIR and he had disclosed the name of the Applicant and the co-accused

only in the supplementary statements recorded under sections 161 and 164 (5) of the Cr.P.C. It is pertinent to note that PW-1 has explained that the Applicant and the co-accused had threatened him not to disclose their names to anyone. He has further stated that on the date of the incident the Applicant had called on the cell phone of Rangeela and that he had answered the said call. This witness had stated that the Applicant had enquired about the condition of Rangeela and when he had told him that his condition was critical, Applicant had asked him whether anyone had seen the said incident. Thereafter the Applicant and the co-accused had come to the place of the incident and after confirming that Rangeela was dead, the Applicant had phoned his mother. The mother of the Applicant had told him to report to the police that some unknown persons had quarreled with Rangeela and assaulted him and ran away from the place of the incident. This witness has therefore, explained the circumstances under which he had lodged the report and hence, not disclosing the names of the Applicant and other co-accused in the FIR is not of much significance at this stage.

5. The testimony of PW-7 also prima facie proves the involvement of the Applicant and the other co-accused in commission of the said crime. The medical evidence also indicates that said Rangeela had sustained incised wounds on the

chest. The medical evidence prima facie corroborates the ocular version.

6. Having considered the material on record, we are not inclined to grant bail and suspend the substantive sentence imposed on the Applicant. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI,J.) (SMT. V.K. TAHILRAMANI,J.)