

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRI. BAIL APPLICATION NO. 1560 OF 2016

Rahul Sanjay Vishwakarma ... Applicant.

V/s.

The State of Maharashtra ... Respondent.

Mr. Aniket Nikam, Advocate i/by Aashish Satpute, Advocate for the Applicant.

Mr. Y. M. Nakhwa, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 04th AUGUST, 2016

P.C. :

1 Applicant/accused in Crime No. I-13 of 2015 registered with Indiranagar Police Station, Dist. Nashik at the instance of informant - Sau. Rohini Salve for the offences punishable under sections 302, 307, 323, 294 r/w. 34 of the Indian Penal Code and under section 135 of the Maharashtra Police Act, by this application under section 439 of the Criminal Procedure Code, is praying for releasing him on bail.

2 Heard the learned counsel appearing for the Applicant/accused. He argued that the role of the present applicant, as seen from the chargesheet is only assaulting the deceased by means of fist blows. Learned counsel for the

applicant further argued that the incident was not preplanned or premeditated. In a hit of moment the incident in question happened. Learned counsel further argued that the applicant is a young person.

3 Learned APP opposed the application by submitting that the prosecution witnesses and the present applicant are residents of the same locality and there are chances of tampering of prosecution evidence. Learned APP further argued that there are several eye witnesses to the incident in question.

4 Perused the chargesheet including statements of Sau. Rohini Salve, aunt of deceased Vishal Salve, Rohit Salve, cousin of deceased -Vishal, Ramesh Gethe, Dattatray Garde, Anjee Reddy and Arun Salve. From the statements of witnesses, the prosecution case is thus :

5 Rohit Salve on 17.01.2015 has informed his mother Rohini Salve that co-accused Dhirendra @ Dhiraj Suresh Sharma is teasing him as well as his uncle Vishal Salve (since deceased). From the persons residing in the neighbour-hood, informant- Rohini also came to know about the said fact. Hence, she decided to seek help from Suresh Sharma, the father of co-accused - Dhirendra @ Dhiraj Sharma. By meeting Suresh Sharma, informant Rohini Salve was trying to sort out the issue. Suresh Shamra then telephonically contacted his son

i.e. co-accused Dhirendra @ Dhiraj and called him. Within 5 to 10 minutes Dhirendra @ Dhiraj responded the call of his father Suresh Sharma and accused-Dhirendra @ Dhiraj reached to the spot with co-accused Ravi Shivshankar Sharma. The present applicant-Rahul Vishwakarma also came there. In the presence of father of Dhirendra @ Dhiraj, informant Rohini requested Dhirendra @ Dhiraj not to tease her son and nephew. Upon that Dhirendra @ Dhiraj showed audacity to tell informant Rohini in the presence of his own father that he had given abuses to Rohit and Vishal in past and now also he will abuse them. Then co-accused Dhirendra @ Dhiraj gave abuses in the name of the mother to Rohit and Vishal in the presence of his own father Suresh Sharma. Thereafter, Dhirendra @ Dhiraj and other co-accused persons namely, Ravi, Pravin and present applicant -Rahul Vishwakarma started assaulting Rohit and Vishal. In the course of that assault, Dhirendra @ Dhiraj gave a blow of knife to Vishal Salve. All accused persons then fled from the spot of incident.

6 Ultimately on the next day i.e. on 18.01.2015 Vishal Salve succumbed to the stab injury suffered by him. The force with which the blow of knife was given to Vishal can be seen from the postmortem report. Vishal died homicidal death. From the charge-sheet it is revealed that accused persons including the present applicant had done the act of assaulting the deceased in furtherance of their common

intention and in that process deceased - Vishal was murdered. As such it cannot be said that the present applicant had only assaulted the deceased by means of fist blows and, therefore, he is not liable for the offence punishable under section 302 of the IPC. The offence is punishable with either death or life imprisonment.

7 No case for bail is made out. The application is rejected.

(A. M. BADAR, J.)

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