

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2409 OF 2015

Bastiram Ramlal Bisnoi & Anr.	...	Applicants
Vs.		
The State of Maharashtra	...	Respondent

Mr. Subhash Jha a/w. Ms. Rushita Jain i/b. Law Global Advocates for the applicant.

Mrs. M.H. Mhatre, APP for the State.

Mr. M.K. Kocharekar, Advocate for the complainant.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **23rd March, 2016.**

P.C.:

This Application is moved for bail, as the applicants/accused are facing charges under sections 302, 201, 143, 147, 148, 149 of the Indian Penal Code in C.R. No. I-105 of 2015 registered with Bhoiwada Police Station, Bhiwandi, District Thane. The offence is registered at the instance of Shabirali Himatali Ansari.

2. As per the case of the prosecution, deceased Imitiaz Ali is a brother of the complainant. On 31st July, 2015 after dinner Imitiaz left home at 10.30 a.m. and told that he would be coming back within 10 minutes. However, he did not return home till 11.30 p.m. Therefore, the complainant and his friend went out in his search but he was not found. At around 3.30 a.m. his friend Akram informed the complainant that in the Faizan compound, some persons are beating one boy and therefore, he was

rushing there and asked him also to come there. When he reached near Faizan compound, many people were gathered there and the factory was closed. On enquiry, they were informed that the factory is owned by the applicants/accused Bastiram Bisnol & Bhajanlal Bisnol. On that night, one boy approached them for matchstick, however, they thought that he is a thief and was beaten up by the applicants/accused and other persons and thereafter, one of the them informed the applicants/accused that they should not beat. He contacted Bhoiwada Police Station and reported about the incident. When he entered the factory Imitiaz was not found. However, the police took the applicant/accused Bhajanlal in custody and at around 7.45 a.m. body of Imitiaz was found near Faizan compound and he was dead. The complainant gave complaint against the applicants/accused and other persons that his brother was beaten up by the applicants/accused and other persons with wooden rod and loom belt and they murdered Imitiaz. The applicants/accused thereafter were arrested immediately.

3. The learned counsel for the applicants/accused has submitted that both the applicants are innocent. They have not committed any offence. There is no eye witness to the incident. The investigation is complete and charge sheet is filed in the Court of JMFC, 5th Court, Bhiwandi. The applicants/accused are not likely to jump the bail. The learned Judge has passed a cryptic order and rejected the Bail Application of this

applicants/accused on 19th November, 2015. He further that this is not the case of murder. The prosecution could not bring any motive. Therefore, this case comes at the most under section 304 Part II. He further submitted that the applicant/accused has no reason to meet the deceased at this very late hours of the night. He submitted that Ali Hussain Jamat Pathan, who claims to be an eye witness did not mention the name of the applicants/accused. He further submitted Test Identification Parade conducted is not reliable because Ali Hussain Jamat Pathan claims that he has identified the accused in the T.I. Parade. The learned counsel further relied on number of authorities:

- (i) Judgement of Supreme Court in Mavila Thamban Nambiar vs. State of Maharashtra, reported in (2009) 17 SCC 441.
- (ii) Judgment of Delhi High Court in Sahil Dahiya & Ors. vs. State, reported in 2015(151) DRJ84.
- (iii) Judgment of Bombay High Court in Pradeep Shivaji Shinare vs. State of Maharashtra, reported in 2013 ALL MR(CRI) 1317.
- (iv) Judgment of Karnataka High Court in N. Scmasekhar vs. State of Karnataka, reported in ILR 1992 Karnataka 754.
- (v) Judgment of Supreme Court in State of Maharashtra vs. Ramesh Taurani, reported in (1998) 1 SCC 41.
- (vi) Judgment of Bombay High Court, Goa Bench in Sham Ramnath

Kamulkar vs. State, reported in 2006 (18) Criminal CC464.

4. Learned APP opposed the Bail Application. She submitted that the eye witness Ali Hussain Jamat Pathan has seen two persons beating the deceased with loom belt and wooden rod. She relied on the statement of the complainant, who has stated that his brother was missing on that night and thereafter his body was found in the gutter near the factory. She relied on the seizure of loom belt and wooden rod. She also relied on postmortem report. She submitted that this is a case of murder and hence the applicants/accused are not to be released on bail, as they are likely to tamper the evidence. Learned APP relied on CDR of the applicant/accused disclosing that both the accused have communicated and tried to contact each other and some persons on the wee hours of that night, i.e., immediately after the incident.

5. Perused the complaint, statement of the witness, order passed by the learned District Judge and postmortem notes. The postmortem notes discloses that there were multiple contusion with abrasion on the body of the deceased. The contusion was found on the occipital, parietal region of the skull. He has suffered subdural haematoma with hemorrhagic contusions on occipital & frontal lobe. The deceased died due to shock due to head injury and the injury to vital organ like brain and lungs. This

shows that the weapons which was seized, i.e., loom belt and wooden rod were used in assaulting the deceased. There is an eye witness, namely, Ali Hussain Jamt Ali Pathan who was working in the weaving factory of one Mr. Kalam. He being the watchman was on duty in the night intervening 31st July, 2015 and 1st August, 2015. He saw two persons assaulting one person. The incident has taken place at around 1.30 a.m. to 2 a.m. and when he again went there at 3 a.m. he did not see anybody. There is also an evidence of CDR of applicants/accused. There are some statements that deceased had entered the factory with intention to commit theft and therefore, he was beaten up. If it is so, then that would have been a motive.

6. On the point of bringing down the case from section 302 to Section 304 Part II, the learned counsel for the applicants relied on **Mavila Thamban Nambiar** (*supra*). In the said case, the appellant gave one blow and therefore, intention to cause death could not be imputed to him.

7. In the case of **Sahil Dahiya** (*supra*), the incident suddenly took place in the market complex. It was not pre-meditated and no weapon were used in the offence. The three accused threw the deceased on the ground, as a result, his head struck the footpath and he died.

8. In the case of **Pradeep Shivaji Shinare** (*supra*), while entertaining the Bail Application, the learned Single Judge has discussed the role played by the applicant/accused, who was a member of unlawful assembly and the role attributed to him that he hit the victim on neck, head and chest with wooden handle of a spade. However, other accused have assaulted the victim with iron rod on chest and head and with sword, however, in the postmortem report, only one head injury was found and therefore, per se contradiction was found in the description of assault and injury in the postmortem report, hence, the Court granted bail.

9. In the case of **N. Scmasekhar** (*supra*), the learned Single Judge of Karnataka High Court laid down the criteria of grant of bail and also discussed the law laid down by the Hon'ble Supreme Court under section 439 of Cr. P.C. The learned Judge has discussed the provisions of bail and the law of an individual is precious, as the bail is a rule and delay is an exception. The ratio down cannot be dispute

10. In the case of **State of Maharashtra vs. Ramesh Taurani**(*supra*) the victim was shot dead through contract killers. This case is against the case of Mr. Jha, as the Appeal against grant of bail to the accused was allowed.

11. In the case of **Sham Ramnath Kamulkar** (*supra*), the incident took

in a spur of moment in a hotel. The deceased was handicap and was using crutch. The deceased hit the accused with the said crutch and then the accused snatched the crutch and hit the deceased on his head. The deceased died. Therefore, the learned Judge has granted bail.

12. The facts of all these cases relied by the learned counsel for the applicants are distinguishable. At this stage, it cannot be conclusively said that it is case under section 304 Part II.

13. Considering the facts of the case and the evidence available, *prima facie* there appears some substance in the submissions of learned counsel Mr. Jha that this case may be brought to a lesser degree. It may be under section 304 Part I or II, however, there are many injuries on the body of the deceased and the manner in which the deceased was beaten up, I am not inclined to grant bail at this stage. Hence, the Application for bail is rejected.

14. The applicants/accused are arrested on 1st August, 2015. Hence, the learned Trial Court to endeavour to conclude the trial within one year.

(MRIDULA BHATKAR, J.)