

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2716 OF 2014

Virendra Singh @ Viren Thakur
s/o. Drinkpal Singh
Vs.

... Applicant

The State of Maharashtra

... Respondent

Mr. Prakash L. Shetty i/b. Ravi Dwivedi, Advocate for the applicant.

Mrs. S.S. Kaushik, APP for the State.

Mr. Marad Bharat Dagadh, P.I., Nirmal Nagar Police Station present.

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

DATE: **30th March, 2016.**

P.C.:

This Application is moved for bail, as the applicant/accused is facing charges under sections 302, 324, 143, 147, 148, 149 of the Indian Penal Code, Sections 3, 25, 4 and 27 of the Indian Arms Act and under sections 3(1)(i), 3(2), Section 3(3) of MCOC Act.

2. It is the case of the prosecution that the applicant/accused is a member of the gang of one Rahul Sharma. The applicant/accused and his associates and deceased Vijay Pujari alias Batta and his associates had criminal enmity. Both the groups have conflicting political interest and had quarrels with each other. On 31st July, 2013 at night Vijay Pujari along with his friends including complainant went to Sharada Hotel at Santacruz(E) for dinner. At that time, co-accused Rahul Sharma , Ajay Pandit, Viren Thakur, Subhash Shukla and other persons along with applicant/accused

Virendra Singh arrived there armed with weapons. Rahul Sharma fired twice at Vijay Pujari and thereafter all the co-accused and applicant/accused, who were holding knives and other edged weapons, assaulted Vijay Pujari. The complainant tried to intervene, however, he was threatened and also manhandled. The accused persons thereafter ran away. The complaint was given by Chandan @ Akhandpratap Singh on 1st August, 2013. The offence is registered at C.R. No. 220 of 2013 at Nirmal Nagar Police Station, Mumbai. Pursuant to that, the applicant/accused was arrested on 12th August, 2013. Hence, this Bail Application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused and co-accused had disputes prior to the incident with deceased Vijay Pujari on number of occasions and therefore, the applicant/accused is falsely implicated in the present case. The learned counsel submitted that apart from associates of deceased Vijay, who claimed to be present at the time of incident, statements of 4 to 5 staff members of the hotel were recorded who are supposed to be eye witnesses to the incident, however, none of them can identify the applicant/accused in the Test Identification Parade conducted on 30th October, 2013. He further submitted that false implication of applicant/accused in this case is possible, as the eye witnesses and complainant were closely associated with the deceased. He further submitted that the prosecution has deliberately

invoked MCOC Act in order to cover up the delay in the investigation and filing of charge sheet. The applicant/accused was arrested on 12th August, 2013 and MCOC Act was invoked on 3rd November, 2013. He submitted that the sanction was given on 29th January, 2014 and immediately thereafter charge sheet was filed. He further submitted that the applicant/accused is not a member of the gang of Rahul Sharma. Against the applicant/accused, the police have collected evidence of seizure of his clothes when he was arrested and secondly a recovery of weapon, i.e., knife on 16th August, 2013 under section 27 of the Evidence Act. The learned counsel further submitted that besides this, there is no evidence against the applicant/accused. He further submitted that unless there is an independent corroboration, there is no good reason for the applicant/accused to be put behind the bar without trial for such a long time. Hence, the applicant/accused is to be released on bail.

4. Learned APP opposed the Application. She relied on the statement of the complainant. She submitted that the applicant/accused and co-accused were armed with weapons. The statements of other eye witnesses are also relied by the learned APP. She pointed out that the cause of death mentioned in the postmortem notes is due to multiple incised injuries and also the injuries caused by fire arms. She further submitted that the police are justified in invoking MCOC Act.

5. Perused the FIR, statement of the complainant and other witnesses. The statement of the complainant and other eye witnesses, though they may be the associates of the deceased, prima facie shows that the accused were present at the time of incident. The statements reveal the name of the applicant/accused as assailant and he was holding edged weapon and assaulted the deceased immediately when Rahul Sharma fired at the deceased. The postmortem report discloses that apart from fire arm injuries, there were 28 incised wounds and nearly 15 incised wounds are independently sufficient to cause death of the deceased. This shows that the deceased was brutally murdered. The independent witnesses might not have identified applicant/accused in the Test Identification Parade and there may not be blood stains on the knife which is recovered under section 27 of the Evidence Act. At this stage, the statements of complainant and eye witnesses are sufficient material against the applicant/accused to reject the bail. Hence, Application for bail is rejected. The trial Court may endeavour to take up the matter as early as possible.

(MRIDULA BHATKAR, J.)