

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2478 OF 2015

Papya @ Vishal Hindurao Kamble	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Niteen Pradhan, Adv. i/b. Sandip L. Babar, Adv. for the applicant.
Mrs. G.P. Mulekar, APP for the State.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 29th January, 2016.

P.C. :

1. At the outset Mr. Pradhan, the learned counsel for the applicant seeks leave to carry out amendment as to correct the Crime No.273 of 2015 instead of Crime No.312 of 2015. Leave granted. Amendments to be carried out forthwith.

2. This is an application for bail filed under Section 439 of Cr.P.C. by the aforesaid applicant who was arrested in Crime No.273 of 2015 registered at Thane Karad City Police Station, Karad for offences punishable under Sections 302, 143, 144, 148 & 149 of the IPC and under Section 37(1) (3) / 135 of the Bombay Police Act.

3. The case of the prosecution in brief is that on 20th July, 2015 at about 8.45 am, the applicant along with other co-accused

formed an unlawful assembly armed with deadly weapons and committed murder of Babar Shamshad Khan. The crime was registered pursuant to the FIR lodged by Nasir Shamshad Khan, the brother of the deceased. The applicant was arrested on 24th July, 2015. The crime was investigated and upon completion of the investigation chargesheet was filed and the case being sessions triable has been committed to Sessions Court, Kadad. The applicant had filed an application for bail which has been dismissed by Addl. Sessions Judge, Karad vide order dated 16th December, 2015. Hence the present application.

4. Mr. Pradhan, the learned counsel for the applicant has submitted that on the relevant date the deceased Babar had fired gun shots at Bablu and that when the mother of Bablu had intervened he had also fired gun shots at her and caused injuries to her. He has submitted that the applicant and other people from the locality gathered at the place of the incident and tried to prevent Babar from firing further gun shots. He has further submitted that the statement of Vikas Waghmare indicates that the applicant herein had caught hold said Babar. The learned counsel Mr. Pradhan submits that under such circumstances, mere presence at the place of the incident and

further preventing the assailant from inflicting injuries would not *per se* show his involvement in the crime. He has further submitted that there is no prima facie material to show that the applicant had inflicted injuries on Babar.

5. Mrs. Mulekar, the learned APP for the State submits that the material on record prima facie indicates that the applicant was present at the place of the incident. She has further submitted that the statement of Imam indicates that the person wearing blue-checks shirt had thrown a stone on the head of deceased. She has submitted that the clothes of the applicant recovered from his house after his arrest were stained with blood. The learned APP submits that the description of the said clothes tallies with the description given by the witness Imam and this fact prima facie indicates that the applicant is the same persons who had thrown a stone on the head of the deceased.

6. I have perused the records and considered the submissions advanced by the learned counsel for the applicant and learned APP for the State. The records reveal that on the relevant day the deceased Babar had gone to the house of Bablu and fired gun shots at him and thereby caused his death. The records further reveal that when

Anusaya, the mother of Bablu had tried to intervene, the deceased Babar had fired at her and caused injuries. The people from the locality, including the applicant had gathered at the place of the incident and had held him and tried to prevent him from causing further harm. Four to five persons from the said group assaulted him with iron rod, cement pipe, stones etc. and thereby caused his death. None of the witnesses except Vikas Waghmare had attributed any overt act to the applicant. The statement of Vikas indicates that the applicant was present at the place of the incident and had held the deceased from behind while the other assaulted him with iron rods, cement pipe, stone, etc.

7. Vikas Waghmare, the only witness who had named the applicant in the statement under Section 161 of Cr.P.C. has not alleged that the applicant was involved in inflicting injury on the deceased. The only overt act attributed to the applicant is that he had held said Babar. It is pertinent to note that the incident was not premeditated and had occurred on the spur of the moment. The applicant had not come armed with any weapon but had merely held the deceased Babar, who was armed with a fire arm and who had already fired gunshots at Bablu and his mother Anusaya. Under these

circumstances, prima facie the possibility of the applicant holding the assailant (Babar) with an intention of preventing him from causing further harm cannot be ruled out. Consequently the fact that the applicant had held the deceased Babar would not prima facie lead to an inference that he had intention of causing death of Babar. The aforesaid facts and circumstances, in my considered view, would not justify further detention. Furthermore, the learned counsel for the applicant under instructions has stated that except attending the Court hearing, the applicant shall stay away from Karad City.

8. Considering the above facts and circumstances, the application is allowed on the following terms and conditions.

- (i) The applicant shall be released on bail on furnishing P.R. bond of Rs.30,000/- (Rupees Thirty Thousand only) with one or two sureties in the like amount to the satisfaction of the Addl. Sessions Judge, Karad.
- (ii) The applicant shall not tamper with the evidence or influence complainant and witnesses in any manner.

(ANUJA PRABHUDESSAI, J.)