

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 240 OF 2017

Vijay Parshuram Moghe ... Applicant
Vs.
1. Senior Inspector of Police
2. The State of Maharashtra ... Respondents

Mr. Balwant Salunkhe i/b. Mr. Satyavrat Joshi, Advocate for the Applicant.
Mr. Y.M. Nakhwa, APP for Respondent – State.
Mr. S.A. Jagtap, Police Constable, Kathrud Police Station, Pune city present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **30th January, 2017.**

P.C.:

This Application is moved by the applicant/accused for bail, as he is facing charges under sections 302, 362, 367, 354, 323 r/w. 34 of Indian Penal Code in C.R. No. 440 of 2015 with Kothrud Police Station, Pune.

2. It is the case of the complainant, i.e., wife of the deceased, that the family of the applicant/accused were suspicious about the illicit relations between son of the complainant Datta and wife of Ganesh Moghe, one of the accused, therefore, there was hostility between the two families. On 30th November, 2015 in the morning at around 10.30 a.m. when the complainant alongwith her two daughters and her husband were near one temple, at that time, applicant/accused Vijay alongwith his family members

and co-accused Ganesh Moghe, Raju Moghe and Nana Moghe arrived there and assaulted the complainant and her daughter and pulled the saree of the complainant. then all 4 of them assaulted her husband with kicks and fist blows. Thereafter her husband fell down unconscious and so they all ran away. While running, they caught hold of the other son of the complainant and assaulted him. Due to assault, the husband of the complainant expired on the same day, therefore, she approached the police on the same day, i.e., 30th September, 2015 and gave complaint, pursuant to which the offence is registered against the applicant/accused and three accused persons.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused was arrested on the same day, i.e., 30th September, 2015 and since then he is in prison. The applicant/accused and other accused are falsely implicated in this case. They did not use any weapons. They did not have any intention to kill the deceased. He submitted that there is no recovery at the instance of the applicant/accused. There is no criminal record against the applicant/accused and therefore, he be released on bail.

4. Learned APP relied on the statement of witnesses, complainant and postmortem report. Learned APP submitted that applicant/accused and

other co-accused have brutally assaulted the deceased and the deceased died due to multiple injuries on his neck and head and therefore, the applicant/accused is not to be released on bail. He further submitted that there are eye witnesses who corroborate each other. Learned APP submitted that charge sheet is filed.

5. Perused the FIR, statement of witnesses and postmortem notes. The name of the applicant/accused is not mentioned in the FIR as assailant. The applicant/accused along with co-accused have assaulted the deceased with fist blows and kicks. The postmortem notes reveal that the deceased had sustained multiple injuries all over his body. The role played by the applicant/accused in this offence is apparent, however, it is a fact that no weapon is used by the applicant/accused at the time of incident. The deceased was assaulted with fist blows and kicks collectively. There is recovery of hammar at the instance of co-accused Nana alias Shankar Moghe. In the cause of death, there is mention that the deceased died due to impact on neck and head. The applicant/accused does not have criminal record. He is in prison since 30th September, 2015. In view of this, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

ORDER

- (i) Application is allowed.

- (ii) The applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.50,000/- with one or two sureties in the like amount;
- (iii) The applicant shall not commit any offence especially the offence against human body;
- (iv) The applicant shall not pressurize or threaten the complainant or her family members or the witnesses;
- (v) The applicant shall not tamper with the evidence;
- (vi) The applicant shall not jump the bail;
- (vii) The applicant shall attend all Court dates;
- (viii) The applicant shall not enter in Kelewadi, Kothrud for a period of one year;
- (ix) The applicant shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address;
- (x) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

6. The Application for bail stands disposed of on above terms.

(MRIDULA BHATKAR, J.)