

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 994 OF 2016

Amar Gurunath Desale	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Vivek Salunke i/b. Mr. Dinesh R. Shinde, Advocate for the applicant.
Ms. J.S. Lohokare, APP, for the State.

CORAM: SMT. SADHANA S. JADHAV, J.
DATE : 13th February, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 4.6.2015 in Crime No. 548 of 2015 registered at Mahatma Phule Chowk Police Station, Kalyan. The investigation is completed and charge-sheet is filed against the present applicants and others for the offences punishable under Sections 302, 201, 323 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that on 4.6.2015 Guddu Mohd. Umar Khan lodged a report at the police station that he along with Laxman Bhandari were in a habit of stealing iron scrap from NRC Company. On 3.6.2015 at about 2.30 p.m. first informant along with Laxman was consuming alcohol. At that relevant time, they decided to commit robbery in NRC Company. They were attempting to jump over the wall of NRC

Company. They were attempting to jump over the wall of NRC Company. The applicant who happens to be a watchman of the said company had apprehended Laxman and the first informant. They were brutally assaulted by iron pipes by the applicant and his associate. The first informant had rescued himself by jumping over the wall, and was peeping, through the broken wall. The first informant saw that a white colour Tata Sumo had come to the spot and Laxman was thrown in the said car. Then the car had proceeded further. On the next day, Guddu had enquired with wife of Laxman. She had disclosed that he had not returned home. At the same time, they received a message that an unidentified dead body of male is lying on the railway track. The first informant soon realised that it was his friend Laxman who was brutally assaulted by the watchmen Shivprasad Pandey and Amar Desle and they have thrown the dead body on the track only to create a scene that it was an accidental death or suicidal death of Laxman.

3. Perused the post-mortem notes. The injuries mentioned in the post-mortem notes make it amply clear that the deceased had neither died an accidental death nor a suicidal death. There is material on record to indicate that the present applicant and Shivprasad Pandey had accosted the deceased as he suspected him to be a thief.

4. The learned counsel for the applicant submits that the statement of one Hariram Gorakh Rai, who was working as security guard in NRC company, has disclose that they had learnt that the present applicant and Shivprasad had accosted the thief and had brought him near the security guard room. The learned counsel for the applicant on the basis of the statement of Hariram submits that it is not exclusively the present applicant who had assaulted the deceased and according to the learned counsel, the deceased was assaulted by several persons i.e. the present applicant, Shivprasad Pnde and Wankhede and therefore, according to the learned counsel, the applicant has not died the homicidal death at the hands of the present applicant. The co-accused Shivprasad had filed Criminal Application No.247 of 2016. The application was rejected by order dated 12.1.2017 and this Court had clearly observed that the first informant happens to be an eye-witness to the said incident. There is direct evidence and as on today, although charge sheet is filed, there is no reason to disbelieve the ocular evidence.

5. The application being sans merits, stands rejected.

6. The Sessions Court shall not be influenced by the said observation at the time of trial.

(SMT. SADHANA S.JADHAV, J.)