

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1192 OF 2017

Karunashanker @ Babusahab
@ Chotu Ravindra Singh ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....
Mr.Ashutosh O. Shukla, Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 9th NOVEMBER 2017.

P.C. :

1 The applicant/accused in Crime No.290 of 2015 registered with Manikpur Police Station, District Palghar for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC' for the sake of brevity), by this application, is seeking his release on bail during pendency of the trial.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that in this case, based on circumstantial evidence, there is no eye witness. The evidence against the applicant/accused is comprising of statement of co-

accused as well as statements of his own relatives which are to the effect that he returned back in the morning hours with soiled and blood stained clothes. With this, the learned Advocate appearing for the applicant/accused argued that the applicant is entitled for bail considering the scanty evidence against him.

3 The learned Additional Public Prosecutor opposed the application by submitting that the prosecution is relying on the last seen theory and the applicant was found to be in company of the deceased soon before the deceased was murdered. The learned Additional Public Prosecutor further argued that there are statements of witnesses which are stating that the applicant was found in company of the deceased soon before the incident.

4 I have carefully considered the rival submissions and also perused the entire charge-sheet.

5 The crime in question is registered on the basis of report lodged by Hareshwar Jagannath Patil, Police Patil of village Diwan Mangaon. He reported that in the morning hours on 12/09/2015, he found dead body of an unknown person by the side of the road from Krishna Township to Nalasopara.

6 Postmortem report shows that the person found dead on the spot, whose identity is established as Mehul Gunwant Vediya, died homicidal death. He was having head injuries.

Incised wound on right side of his forehead was having regular sharp cutting edge.

7 According to the prosecution case, because of some dispute, the applicant along with co-accused intoxicated the deceased at the Bar as well as on the beach and subsequently, killed him by assaulting him by means of broken liquor bottle in the night intervening 11/09/2016 and 12/09/2016.

8 Statements of Vishwanath Pujari – Manager and Rama Madiwala – waiter of Hotel Abhiraj/Atithi Bar shows that on 11/09/2015 from 4.30 p.m to 6.00 p.m. deceased Mehul along with the present applicant and the co-accused indulged in the booze session. Statement of Rajkumar Raheja – owner of Chetan Wines, Vasai shows that at about 6.45 p.m. the present applicant along with the co-accused had purchased a bottle of Blue Reband Jin from his Wine Shop.

9 The spot panchanama shows that on the spot of the incident, broken bottle of Blue Reband Jin was found. This evidence will have to be considered with the postmortem report showing regular sharp cutting edge injury on the head of the deceased.

10 Statement of Varun Singh and Sarita Singh shows that the present applicant accused was not at his home in the night

intervening 11/09/2016 and 12/09/2016. He returned home at about 7.00 to 7.30 a.m. with soiled clothes which were also having stains of blood. Statement of these witnesses shows that the present applicant was having injury near his wrist apart from stains of blood on his palm. According to the prosecution case, the applicant had assaulted the deceased by means of a broken wine bottle.

11 The circumstantial evidence collected by the prosecution, *prima facie*, indicates that the applicant had murdered deceased Mehul with the aid of co-accused. The applicant along with co-accused were found in company of deceased soon before this death. The last seen theory comes into play when the time gap between the point of time when the accused and deceased were found alive and when the deceased found dead is so small that possibility of any other person than the accused being the author of crime becomes impossible. The applicant accused is seen to be in company of the present applicant at least till 6.45 p.m. on 11/09/2016 and dead body of deceased Mehul was found immediately in the next morning.

12 In this view of the matter, no case for bail is made out. The application is, therefore, rejected.

(A.M.BADAR J.)