

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1858 OF 2017

Malhari @ Malya Hanmant Gujale	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms.Manisha A Devkar for the applicant.
Mr. R.M.Pethe APP for the State.

CORAM: A.M. BADAR, J.
DATED: 20th NOVEMBER 2017

PC:-

1. The applicant/accused in Crime No.334 of 2015 registered with Police Station Nerul, Navi Mumbai for the offences punishable under Section 302, 120B of the Indian Penal Code, by this application is seeking his release on bail after filing of the charge-sheet.

2. Heard the learned advocate appearing for the applicant/accused. She argued that the FIR is against the unknown accused persons and according to the prosecution case there are three eye witnesses to the incident in question.

By taking me through the statements of those three eye witnesses the learned advocate argued that their statements do not point out accusing finger to the present applicant and his identity is not established by those statements.

3. The learned APP opposed the application by pointing out statement of Sandip Gaikwad, brother-in-law of the deceased as well as Sunil Sathe-Manager of the Hotel at Karad to show that two persons accompanied main accused Salman @ Ilhai Shaikh in the night intervening between 1.12.2015 and 2.12.2015.

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

5. Swapnil Patil died homicidal death in the night intervening 1.12.2015 and 2.12.2015. The FIR is against unknown person. The FIR contends recitals regarding suspicion of the first informant against one Mahesh Damodar

Thakur alleging illicit relations of said Mahesh Thakur with wife of deceased Swapnil Patil. During the course of investigation, it appears that nothing incriminating was found against Mahesh Damodar Thakur. However, the prosecution averred that main accused Salman alongwith his two friends i.e. the present applicant and the co-accused committed murder of Swapnil Patil.

6. According to the prosecution case, Mehendi, Arif and Ramchandra are eye witnesses to the incident in question. It is seen that Ramchandra is not an eye witness but he heard narrations from another witness Asif. Version of Mehendi and Asif is congruous and they have stated that on 1.12.2015 deceased Swapnil Patil was in company of his three friends and he had introduced one from them to Mehendi and Asif. The name of that person is stated by this witnesses as Salman. They further stated that at about 6 p.m. of 1.12.2015 they had been to Ramlila ground and saw said Salman and his two friends were assaulting Swapnil Patil. According to the

prosecution case, Swapnil Patil died because of injuries sustained in the assault.

7. The charge-sheet does not show that there was identification parade to identify those two associates of Salman. Statement of brother-in-law namely, Sandip Gaikwad shows that on 1.12.2015 at about 6.00 a.m. Salman and his two friends had been to his house. Statement of Sunil Sathe- manager shows that Salman and his two friends stayed in the hotel in the night of 1.12.2015.

8. Considering the fact that the prosecution has not conducted identification parade to ascertain, who were the two friends of Salman, who were accompanying him on the day of the incident and as no other evidence against the present applicant is pointed out to implicate him in the crime in question, I see no reason to deny bail to the present applicant. Therefore, the following order.

ORDER

- i) The application is allowed.
- ii) The applicant/accused in Crime No.334 of 2015 registered with Police Station Nerul, Navi Mumbai for the offences punishable under Section 302, 120B of the Indian Penal Code, be released on bail on executing P.R Bond of Rs. 25,000/- and on furnishing one or two solvent sureties in the like amount.
- iii) The applicant/accused should not tamper with the prosecution evidence.
- iv) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

(A.M. BADAR, J)