

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1956 OF 2017

1. Dinesh Baluu Tak	...Applicants
2. Suraj @ Kale Ranbir Kalyani	
Versus	
The State of Maharashtra	...Respondent

Ms.Mallika A.Ingale i/b Pranoti B.Pawar for the applicant.
Ms. Anamika Malhotra, APP for the State
PSI,Auti, Kandivali, Police Station.

CORAM: A.M. BADAR, J.
DATED: 30th NOVEMBER 2017

PC:-

1. Both the applicants are accused in Crime No. 1 of 2017 registered with Kandivali police station on 1.1.2017 for the offences punishable under Sections 302, 324, 504,506 r/w 34 of the Indian Penal Code and under Section 37(1)(a) r/w section 135 of the Maharashtra Police Act, by this application are seeking their release on bail.

2. Heard the learned advocate appearing for the applicants/accused. She argued that the first informant Bacchelal Rajbhar is facing trial for commission of offence of

murder of mother of co-accused Vicky Suresh Lohar and Sanju @ Sanjay Suresh Lohar. She further argued that the FIR as well as statement of witnesses shows that the present applicants have not assaulted deceased Santosh Nedur. It is further argued that the incident in question took place in the residential area of applicant No.2 Suraj, whereas the first informant and his associates were residential of some other locality. It is also argued that prima facie it is not possible to infer common intention on the part of the both the applicants in eliminating Santosh Nedur. No weapons were used for committing the crime in question.

3. The learned APP opposed the application by arguing that the offence was committed in pre-determined manner and there was motive for commission of offence. He argued that all accused persons acted in furtherance of their common intention and therefore, they are vicariously liable. The learned APP pointed out that FIR itself shows that the present

applicant was apprehending others to rescue the victim of the crime in question.

4. I have carefully considered the rival submissions and also perused the entire charge-sheet. The incident in question took place on Vadarpada locality. The first informant Bachhelal Rajbhar is resident of Dahanukarvadi. Deceased Santosh Nedur was also not resident of Vadarpada. He was resident of Santoshi Mata Mandir area of Kandivali. At this factual backdrop it is seen that the first informant, his friend Santosh (since deceased) and others went to Vadarpada locality. The reasons stated in the FIR is to greet their friends on the occasion of new year.

5. Undisputedly, first informant Bachhelal Rajbhar is an accused in Sessions Case with an accusation that he committed murder of mother of co-accused Vicky and Sanju Lohar. First informant Bachhelal Rajbhar alleged in his FIR that upon seeing them co-accused Vicky declared that they

should not be spared as they had committed murder of his mother. Upon that, as alleged in the FIR, Sanju and Vicky assaulted Santosh Nedur. Ultimately, Sanju succumbed to the injuries suffered in that assault.

6. So far as the present applicants are concerned, averments against them are to the effect that applicant No.2 Suraj had assaulted first informant Bachhelal Rajbhar and Ramesh by means of Bamboo. Applicant No.1 Dinesh is stated to have assaulted the first informant by means of iron rod. The first informant as well as other witnesses are not stating that both the applicants had assaulted deceased Santosh in any manner. At this stage, it is difficult to infer common intention, because members of the accused party were not armed with weapons. There was wordy duel between both the parties, which ultimately resulted in the incident in question by using whatever material available on the spot.

7. It is seen that first informant Bachhelal Rajbhar had suffered four injuries in the nature of contused lacerated wound and abrasions, which are certified to be simple by the attending Medical Officer. Injured Ramesh has suffered one contused lacerated wound, which is simple in nature.

8. In this view of the matter, after completion of investigation, I see no reason to deny bail to the present applicants therefore, the order.

ORDER:-

- i) The application is allowed.
- ii) The applicants/accused in Crime No.1 of 2017 registered with Kandivali police station on 1.1.2017 for the offences punishable under Sections 302, 324, 504,506 r/w 34 of the Indian Penal Code and under Section 37(1)(a) r/w section 135 of the Maharashtra Police Act, be released on bail on executing their P.R bond of Rs. 15,000/- and on furnishing surety in the like amount by each of them.

- iii) They should not tamper with the prosecution evidence.
- iv) The applicants/ 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)