

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 645 OF 2016

Mr. Rajesh Dashrath Jadhav	...	Applicant
Vs.		
1. State of Maharashtra		
2. Sohail Salim Ansari	...	Respondents

Mr.Kaushik Mhatre, Advocate for the applicant.

Mr.B.L.Jagtap, Advocate for respondent No.2.

Ms. J.S.Lohokare, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 24th January, 2017.

P.C.

The complainant – Rajesh Jadhav, being aggrieved by the order dated 2.8.2016 passed by the Sessions Court at Dindoshi, granting bail in favour of respondent No.2, has filed this application under Section 439(2) of Cr.P.C.

2. It is the case of the prosecution that one Rajesh Jadhav lodged a report at the police station on 22.10.2014 alleging therein that the accused persons are residing in the same chawl as that of the complainant. There used to be intermittent quarrels between both the families. That on 21.10.2014 at about 5.15 p.m., his sister-in-law had informed him that there is some quarrel going on in the chawl. Out of anxiety, he had been to verify

the information. At that time, he saw that Jayesh Trivedi, Hitesh Trivedi and their mother Daya Trivedi were being abused and assaulted by Sohail Ansari, Yusuf Sajida, Imran Kazi and Shahrukh Sajida. The said persons were assaulting Trivedis with fist and kick blows. The first informant was trying to pacify the quarrel. He was also assaulted by the accused persons. His brother Ramesh saw that the first informant was being assaulted and had therefore intervened. The quarrel had aggravated.

3. In the midst of the quarrel, Sohail went to his house and brought a sword and assaulted Ramesh with the sword all over his body. In the meanwhile, Gullu came to the spot with a gupti and assaulted Ramesh on his left thigh. Sohail had assaulted Daya Trivedi on her hand with the sword. In the meanwhile, Yusuf and Imran had held Ramesh in order to facilitate the attack by Sohail. When Ramesh was caught hold by Yusuf and Imran, Sohail and Gullu were assaulting on his person with the respective weapons in their hands. They had also threatened the witnesses. It is in these circumstances that Crime No.497 of 2014 was registered. The investigation is completed and charge-sheet is filed. There are eye-witnesses to the incident. The injured Trivedis are also eye-witnesses.

4. That Gullu Vali Mohd. Sajida had filed Bail Application

No.130 of 2016 before this Court. This Court vide order dated 23.3.2016 had rejected the application. This Court had specifically considered that the accused – Gullu and Sohail were armed with weapons and they are being charged with Section 34 of the Indian Penal Code and that there was an assault on Ramesh which turned out to be fatal.

5. On 2.8.2.106, the application filed by the present respondent No.2 was listed before the Sessions Court. The learned Sessions Court had observed as follows :-

“3. According to the applicant, he is innocent. There was no motive or intention to commit murder of the deceased. The deceased was the intervener and there was no quarrel of applicant with the deceased. The FIR is silent on the point, on which part of body, injuries were sustained due to attack by present applicant. Even otherwise, injury on left thigh by sharp weapon proved to be fatal and death was caused due to the said injury is not caused by applicant which has resulted in the death of the deceased. Houses of all the accused were set on fire and attacks were also made on the families by the hirelings of complainant. Wrong FIR is also registered for offences punishable u/s 307, 324, 323, 506(2), 143, 144, 147,148,`149, 201, 34 of IPC. Applicant has no criminal antecedents. He undertakes not to abscond and prays for bail by contending that he will abide by terms

and conditions, if imposed by this Court while enlarging him on bail.

5. Heard both the sides. The applicant came to be arrested on 22/10/2014. Near about 2 years have lapsed. Further more, according to the applicant this is first application moved for bail by the applicant. Admittedly, fatal blow was not given by the applicant which has resulted into death of the deceased. The trial has not commenced so far. It will take into own time to disposed of the matter by examining number of witnesses. When the trial is not likely to finish up shortly, prayer for bail can be considered, more particularly, when the applicant is languishing in bail for about 2 years. Under the circumstances, by imposing certain conditions, prayer for bail can be considered. Hence, the order.”

It appears that the learned Sessions Judge had not perused the post-mortem notes and what was produced before the Court was cause of death certificate. It is true that even in the post mortem notes, the cause of death is hemorrhagic shock with history of sharp perforating injuries in left thigh by a sharp weapon. Clause 17 of post-mortem report reads as follows :-

“Body multipally stabbed wounds. al the injuries are incised stab wounds (caused by a sharp edged weapon) They aee I) an incised stab wound on right side measuring 2 x 1 cm just below interior mandibular margin (line) - on neck.

- ii) *an incised stab wound on left side measuring 3 x 1.5 cm. just below interior margin of mandible – on neck.*
- iii) *abrasions on left trapezins caused because of nails.*
- iv) *5 x 3 cm. deep incised wound between umbilicus and xipoid region extending from both nipples;*
- v) *abrasions on nape;*
- vi) *On interior left thigh incised stab wound perforating wound 5 x 3 cm. caused by a sharp weapon.”*

It is pertinent to note that the learned Sessions Judge had only considered the fact that respondent No.2 is not the author of the fatal injury i.e the injury portion of thigh. Column No.17 of the post-mortem notes were seen by the learned Sessions Judge where there are deep stab wounds on the umbilicus region thereby causing instantaneous death. What was relied upon is the cause of death certificate. In fact, although there was time for boys to cool down, it was respondent No.2 who had gone to his house and brought a sword with an intention to cause such grievous injuries to one of the persons which may ultimately result into death. All that was being considered is that the respondent No.2 had no animosity with Ramesh and, therefore, Sohail was granted bail. This could be a case of transfer of malice as contemplated under Section 301 of the

Indian Penal Code. What was being enquired is the offence itself and it is the act of the accused which is punishable. The reasons assigned by the learned Sessions Judge do not appeal to any prudent man.

6. The learned counsel for the original complainant rightly submits that this is a perverse order and, therefore, deserves to be set aside.

7. The word “perverse” is defined in the Oxford dictionary as “contrary to that which is accepted or expected; of a verdict/order against the weight of evidence”. Black's Law Dictionary defines “perverse verdict” as “a jury verdict so contrary to the evidence that it justifies the granting of a new trial.”

8. The Hon'ble Apex Court in a catena of decisions has guided all the Courts in respect of the parameters and criteria to be considered while granting bail in offence under Section 302 of the Indian Penal Code. What is necessary to be considered is the gravity of the charge and the role attributed to the accused. It would be necessary to comprehend the role attributed to the accused.

9. The discretion to grant bail must be exercised on the

basis of available material and the facts of the particular case. Although it is not necessary to evaluate the entire material in the charge-sheet, it would be necessary to take into consideration the gravity of the offence and it would be equally necessary to strike a balance between justice imparted to the victim as well as the accused. The liberty of an individual cannot outweigh the interest of the society and, therefore, the observation that the applicant was not responsible for the specific injury which is shown as the cause of death, the fact that the applicant had brought the sword from inside and assaulted the victim on vital parts needs to be taken into consideration. The grant of bail in such cases would not act as a deterrent to the criminality in the minds of the accused persons.

8. In fact, it is clear that the order rejecting the application of Gullu was not brought to the notice of the learned Sessions Judge. In fact, the contention raised while arguing the application for Gullu was that he had caused the injury on a non-vital part and that there was no material to show that they had shared common intention. This is a case for direct evidence. Justice must appear to be done. Only because the accused did not have any animosity with the deceased, he cannot be enlarged on

bail. In fact, the accused – Sohail was the one who had converted a verbal altercation into a physical altercation. He had not only stabbed and assaulted Ramesh with sword, but also assaulted Daya Trivedi and others with the said sword.

9. The learned counsel for the applicant submits that the order granting bail is perverse as the accused was not entitled to be enlarged on bail during the pendency of the trial. The learned Sessions Judge had ignored the fact that the eye-witnesses are also the residents of same chawl. That they could be terrorised. The learned counsel for the applicant submits that in fact, the applicant has certain criminal antecedents and is terrorising people in the said area.

10. In the case of **State of U.P. vs. Amarmani Tripathi (2005) 8 SCC 21**, the Hon'ble Apex Court has observed as follows :-

“In *Prahlad Singh Bhati v. NCT, Delhi* this Court reiterated that if a person was suspected of the crime of an offence punishable with death or imprisonment for life then there must exist grounds which specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with sentence of death or imprisonment for life. **The**

jurisdiction to grant bail must be exercised on the basis of well-settled principles having regard to the circumstances of each case. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused and reasonable apprehension of witnesses being tampered with.”

11. In the case of **CBI vs. V. Vijay Sai Reddy (2013) 7 SCC 452**, the Hon'ble Apex Court has observed as follows :-

“It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing instead of “the evidence” which means the Court dealing with grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected at this stage to have the evidence establishing the guilt of the accused beyond reasonable doubt.” The Supreme Court was pleased to cancel the bail granted in favour of the accused and observed that the Special Judge committed an error in granting bail

and the same was ordinarily affirmed by the High Court.

In the present case, there is ample material to show that the applicant had converted the verbal altercation into a physical altercation, thereafter with a deliberate intention brought the weapon from the house and mounted assault upon the person that too on the vital parts of his body with an intention to cause homicidal death. Hence, the order granting bail deserves to be recalled.

12. Hence, the application stands allowed. The respondent No.2 shall surrender before the learned Sessions Judge on or before 14.2.2017.

13. The respective counsel have made an oral prayer to stay the present order for four weeks. The prayer is rejected since the accused persons are protracting trial by filing discharge applications. There is no likelihood that the respondent No.2 would be available before the trial Court on all dates.

(SMT. SADHANA S.JADHAV, J.)