

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2550 OF 2017

Sagar Sadanand Bhandari ... **Applicant**
V/s.
The State of Maharashtra & Anr. ... **Respondents**

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Mr.Niranjan S. Mundargi, Advocate for the Applicant.

Ms.P. N. Dabholkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 6th DECEMBER 2017.

P.C. :

1 The applicant/accused No.3 in Crime No.45 of 2017 registered with Malad Police Station for the offences punishable under Sections 302, 141, 142, 143, 146, 147, 148, 504, 506 of the Indian penal Code as well as under Section 37(1)(a) read with Section 135 of the Maharashtra Police Act.

2 Heard the learned Advocate appearing for the applicant/accused. He vehemently argued that perusal of statements of eye-witnesses goes to show that injuries sustained by the deceased are not attributable to the act alleged against the present applicant. Nothing was recovered from the present applicant and the incident in question, as seen from the evidence

collected by the prosecution, took place at the spur of the moment. Therefore, the offence punishable under Section 302 of the Indian Penal Code is not made out. There was quarrel between the co-accused and the deceased in which the present applicant had no role. Clothes of the present applicant were not found to be stained with blood and, therefore, further pre-trial detention of the present applicant is not warranted.

3 The learned Additional Public Prosecutor opposed the application by drawing my attention to the report of postmortem examination of the deceased as well as inquest notes. She pointed out statement of eye-witness Ravindra Nimje and submitted that the present applicant had assaulted the deceased by means fist and kick blows as well as iron rod.

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

5 At this stage, report of postmortem examination of Hemantsingh Gulabsingh Rawat @ Pintu Nepali so also inquest notes are sufficient to hold that Hemantsingh died homicidal death.

6 The FIR of the subject crime is lodged by Kusalsinh Gulabsingh Rawat brother of deceased Hemant @ Pintu. He is not an eye witness to the incident in question.

7 The incident leading to the homicidal death of Hemant @ Pintu is witnessed by Nasruddin Khan, Dhirajkumar Pahadiya, Ravindra Nimje, Sandip Das, John Joseph, etc. It is seen from statements of eye-witnesses to the incident in question that when deceased Hemant @ Pintu along with his friend was watching the cricket match, at that time accused persons came. The present applicant challenged Pintu @ Hemant by uttering that 'Pintu had assaulted them prior to seven years and he will be killed'. Then the assault started. Statement of eye-witnesses *prima facie* shows that Hemant @ Pintu was beaten by wooden stumps, iron rod as well as paver block and waist belt by accused persons.

8 Result of assault of Hemant @ Pintu is reflected from the inquest notes as well as report of postmortem examination of his dead body. The deceased had suffered 28 injuries in the assault. His death was due to craniocerebral injury associated with blunt chest, abdominal and back trauma. It is thus found that Hemant @ Pintu died painful death caused because of an assault by means of fists and kick blows, iron road and waist belt.

9 According to the prosecution case, accused persons had formed an common object of eliminating Hemant @ Pintu. The common object of the assembly is *prima facie* disclosed from the statement of Nasruddin Khan, which shows that the present applicant had declared that Hemant @ Pintu's life will not be

spared. Statement of John Joseph shows that during the course of the assault, two policemen arrived at the spot. Presence of those two police officials did not deter accused persons. They continued to rush on person of Hemant @ Pintu in presence of police officials.

10 Participation in the assault by the present applicant *prima facie* establishes membership of the unlawful assembly of common object and, therefore, at this stage, it needs to be held that he was sharing the common object of the assembly making him vicariously liable for the Act. Clause *secondly* of Section 300 of the Indian Penal Code provides that the culpable homicide is murder if the act is done with an intention of causing such bodily injury as the offender knows to be likely to cause the death of a person to whom the harm is caused.

11 Considering statements of witnesses and the result of the assault reflected from the postmortem examination, at this stage, it is not possible to hold that the offence will not fall under Section 300 of the Indian Penal Code.

12 The application is, therefore, rejected.

(A.M.BADAR J.)