

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2639 OF 2016

Pratap Hanumant Khot	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO.35OF 2017
IN
BAIL APPLICATION NO.2639 OF 2016**

Smt.Minakshi Pandurang @ Bandu Saste	... Intervener/ Complainant
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IN THE MATTER OF:

Pratap Khot	.. Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr.S.A. Ingawale i/b Mr.A.M. Misal for the Applicant
Mr.Rutuja Ambekar, APP, for Respondent – State
Mr.S.S. Salunkhe for Intervener in APPP/35/2017

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 6, 2017

P.C. :

1. This application is moved for bail as the applicant/accused is prosecuted for the offence punishable under sections 302, 341, 506 r/w section 34 of the Indian Penal Code in C.R. No.326 of 2016 registered with Akluj Police Station, Dist. Solapur.

2. It is the case of the prosecution that one Bibhishan Vishwanath Vyavhare is the complainant, who was going to Shripur on a motor cycle along with his relative Pandurang Tukaram Saste @ Bandu Saste i.e., the deceased, for some bank work at Shripur and they were proceeding towards their village Nevre on the motor cycle. At that time, two unknown persons arrived and asked Pandurang to stop the vehicle. So, Pandurang stopped the vehicle when the person on the pillion rider, threw some chilly powder on them and thereafter, he took out an axe and started assaulting Pandurang. The other person took out a gupti and ran after the complainant. The complainant asked him what wrong he had done and he went away. Thereafter, both the persons armed with weapons started assaulting Pandurang with axe and gupti and thereafter they ran away. Pandurang fell down in a pool of blood. He succumbed to the injuries on the spot. The complainant called the other persons from the village and Pandurang was shifted to hospital. Thereafter, on the same day, i.e., 30.6.2016, his statement was recorded and the offence was registered by the police as mentioned above. Both the applicant/accused and the co-accused Mahesh Kadam were

arrested on the next day i.e., on 31.7.2016. Hence, this Bail Application.

3. The learned Counsel for the applicant/accused has submitted that there is no evidence against the applicant/accused. There is no motive against the applicant/accused. There is no recovery from the applicant/accused. The police have recovered the motor cycle from the applicant/accused, however, there is no nexus between the recover of the motor cycle and the motor cycle which is used in the offence. He further submitted that there is a delay of 24 days in conducting test identification parade and there is no specific identification of the accused in the test identification parade. The learned Counsel further submitted that the presence of the complainant is in fact doubtful as though the incident of assault took place at around 2.45 p.m., yet, the offence was registered at 9.26 p.m.

4. Learned Prosecutor as also the learned Counsel appearing for the complainant have opposed the application. It is submitted by the learned Prosecutor that there is sufficient evidence against the applicant/accused. The learned Prosecutor relied on the postmortem report and has submitted that it was a brutal murder.

She relied on the statement of the wife of the deceased, who has stated that land dispute was the motive behind this murder. She further submitted that the motor cycle which was used in the commission of the crime, is described as Hero Honda motor cycle and the motor cycle which was recovered at the instance of the applicant/accused is also a Hero Honda motor cycle. She relied on the statements of Kalyan Patil and Rahul Patke and also of one Santosh Doshi. She submitted that all these statements disclose that the two persons on the motor cycle had kept watch on the deceased on that day since morning 12.30 p.m. when he went to the bank. Those persons are seen in the CCTV footage taken out from the CCTV which was affixed in the shop of the witness Santosh Doshi. The learned prosecutor relied on the statement of the complainant and the test identification parade dated 24.8.2016. She further relied on the recovery of the weapons i.e., the axe and the gupti, which were seized from a bore which was 500' deep. The learned Prosecutor submitted that it is not a case for bail.

5. Perused the FIR, the statements of the witnesses which are relied on by both the sides. The postmortem report discloses that it is a death due to shock due to head injury with injury to vital

organs. It shows that nearly 21 injuries were inflicted on the person of the deceased, out of which some were incise and chopped wounds and some were stab injuries. From the statements of witnesses Rahul Patke and Santosh Doshi recorded on 3.8.2016, it appears that two person, who were on motor cycle, have kept watch from 12.30pm when the deceased and the complainant went to the bank. The CCTV footage is seized by the police from the camera which was affixed at the shop of Santosh Doshi. It shows that the assailants have well planned the murder of the deceased. *Prima facie*, on the point of identification of the applicant/accused, the statement of the complainant is material who has witnessed the actual assault in a broad daylight and from a close distance. He has identified the assailant applicant/accused in the test identification parade conducted on 24.8.2016. One more witness Kalyan Narayan Patil who has seen the applicant/accused when they proceeded speedily and crossed each other. The submission of the learned Counsel for the applicant/accused that there is a delay in registration of offence, cannot be appreciated at this stage and it cannot *prima facie*, dislodge the presence of the complainant at this stage.

6. Considering all these cumulative circumstances, I am not inclined to grant bail. Hence, the Bail Application is rejected.
7. Application for intervention stands disposed of.

(MRIDULA BHATKAR, J.)