

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

BAIL PPLICATION NO.1140 OF 2018

Ravindra Gajanan Sonawane

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. Anand Patil I/b. M/s. Anand Patil and Associates for the Applicant.
Mrs. S.S. Kaushik, APP for the Respondent-State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 9th AUGUST, 2018.
(In Chamber)**

P.C.:

This is a second bail application filed by the aforesaid applicant, who is arrayed as accused No.3 in Sessions Case No.6 of 2015 pending before the Sessions Judge, Kolhapur.

2. Heard the learned counsel for the Applicant. He submits that there is no material to implicate the Applicant in the present case. He further states that the witnesses are family members of the first informant and are therefore interested witnesses. He further contends that there is no corroborative evidence such as recovery of weapons, blood stained cloth of the Applicant, etc. He has also submitted that there are inconsistencies in the statements of the witnesses and that the

statements of some of the persons named by the witnesses have not been recorded. He has submitted that some of the co-accused are released on bail and that the Applicant is entitled for bail on the ground of parity.

3. The learned counsel for the Applicant also submits that the bail application No.1237 of 2015 was dismissed in view of the statement made by the earlier Advocate on record that the earlier application for bail was dismissed on merits and that there was no change in circumstances. He submits that the Applicant had not filed any other bail application prior to Bail Application No.1237 of 2015. He has placed on record affidavit of the Applicant to that effect. The affidavit is taken on record and marked 'X' for identification. He urges that since the Applicant is in jail for last over 3 years he be released on bail.

4. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant and the learned APP for the Respondent -State.

5. The FIR lodged by Imtiyaz M. Shaikh prima facie reveals that on 25.9.2014 there was a quarrel between him and accused No.1. Subsequently, his parents and cousin-Irfan had intervened, apologised

and sorted out the matter. However, on 26.9.2015 at about 7.00 p.m. while he and his cousin-Irfan were standing near the shop of Dilawar Mulla, accused No.1-Vikram and others came armed with swords, knife, etc. and assaulted his cousin-Irfan. He has stated that the Applicant, whom he had identified as Tanaji had also inflicted blow of sword on the left hand of Irfan. He has further stated that the Applicant and other members of the unlawful assembly had also assaulted him and his parents when they had tried to intervene and prevent them from assaulting Irfan.

6. Said Irfan was subsequently taken to the hospital and was declared dead. Based on the said FIR Crime No.193 of 2014 was recorded against this Applicant and the other accused. The post mortem report prima facie indicates that Irfan had sustained stab injury on chest and incised wounds on other parts of body. The post mortem report states cause of death as 'hemorrhagic shock due to stab injury over right side of chest causing injury to lung'. The medical evidence thus prima facie indicates that the death of Irfan was homicidal.

7. The FIR as well as the statements of the first informant and other witnesses prima facie indicates that the Applicant herein was a member of the unlawful assembly, that he was armed with the sword

and that he had inflicted an injury on Irfan. Thus, there is prima facie material to show the involvement of the Applicant in the aforesaid crime, which is of serious nature. The statements of the injured and the other material witnesses cannot be discarded at this stage for want of corroborative evidence. This is also not a stage to appreciate and scrutinise the material in detail.

8. It may be mentioned that the Applicant herein had filed Bail Application No.1237 of 2015. Mr. Aditya Desai, the learned counsel for the Applicant, who had represented the Applicant in the said application had made a statement that the previous bail application was dismissed on merits and that there was no change in circumstances. The learned counsel for the Applicant has now placed on record an affidavit of the Applicant, wherein he has stated that he had not filed any application prior to filing of the Bail Application No.1237 of 2015 and that the statement made by his counsel was erroneous.

9. It is to be noted that the previous bail application was not dismissed solely on the basis of the statement made by the learned counsel for the Applicant. While, dismissing the said application this Court had also taken note of the fact that there was prima facie

material to show that the Applicant was a member of an unlawful assembly and that he had inflicted a sword injury on Irfan, who had met homicidal death. This Court had also considered the fact that evidence has not yet commenced and the witnesses were yet to be examined and that releasing the Applicant at this stage could hamper the trial. There is no material change in circumstances as regards this aspects.

10. It is well settled that while considering the successive bail application, the Court is required to consider whether there is material change in the facts situation. Having regard to the settled position of law particularly the observations made by the Apex Court in *State Of Maharashtra vs Captain Buddhikota Subha Rao, AIR 1989 SCC 2292* and *Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav & Anr. AIR 2005 SC 921*, I am not inclined to entertain the present application. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)