

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.422 OF 2018

Suraj @ Sumit Suryaprakash Singh,
R/o.Shahad Phatak, Shivaji Road,
Near Sayali Medical, Ulhas Nagar,
District Thane (Preently lodged at
Thane Central Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Aniket Nikam I/by Aashish Satpute for applicant.

Mr.A.R.Kapadnis, APP, for State.

Mr.S.S.Mhaske, PSI, Ulhas Nagar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 31st October 2018

PC :

1. This is an application for bail in connection with CR No.I-97 of 2016 registered with Ulhas Nagar Police Station for offences under Sections 302, 143, 144, 147, 148, 149, 201, 506(2), 120B of Indian Penal Code and under Sections 37(1) and 135 of Bombay Police Act and under Section 4(25) of Arms Act.

2. The applicant was arrested on 11th May 2016. Pursuant to registration of FIR, several persons were arrested. Investigation is completed and charge sheet is filed. The FIR was registered on 11th May 2016 by Gautam Surwade.

3. The prosecution case is that on 10th May 2016 at about 9.30 p.m Deepak Sansare called the complainant and asked him to bring

shoes in his house near Kaka-Ka-Dhaba Hotel. When the complainant reached the hotel along with shoes of Deepak Sansare, he was present at the place along with Santosh Javle and they were talking to one Khavde Mama. The complainant handed over shoes to Deepak. At that time Deepak received phone call from unknown person and he told that he will come within five minutes. The complainant inquired about the person who had called him. Deepak told that some one has called him for compromise of old matter. Subsequently Deepak again received call and at that time the caller told him that he should wait at the said place. After some time Sambhya and Gautam Shirandor came at the said place on motorcycle and took Deepak and left towards Gol Maidan. It is further alleged that at about 10.15 pm the complainant and Santosh Javale reached near Madhuban Chowk, they saw many persons were gathered at that place. The complainant saw that Sambhya was armed with chopper, Gautam Shirandor, Saajan Tak and Harshal Bendre were armed with swords along with 3 to 4 unknown persons and they were assaulting Deepak by means of lethal weapons on various parts of body. When Deepak fell down, Manoj Karotiya, Darpan Karotiya, Babu Karotiya, Sunil Karotiya assaulted Deepak by means of iron sword. The accused left the spot. Thereafter Deepak was shifted to civil hospital where he was declared dead. During the course of investigation the applicant was arrested and on completing the investigation charge sheet is filed.

4. Learned counsel for applicant submitted that the applicant has been falsely implicated in this case. There is no strong evidence to show his involvement in the crime. It is submitted that the complainant in statement dated 11th May 2016, which was treated as

FIR, had not disclosed the name of applicant. The supplementary statement of complainant has referred to the applicant as one of the person who had allegedly participated in the crime. It is further submitted that other eye witness Santosh Javale has not referred to the name of applicant as the person who had participated in the crime. It is submitted that the statement of complainant was recorded u/s 164 of Cr.P.C on 14th June 2016. In the said statement the witness has not attributed specific overt act to the applicant. It is submitted that the statement of Santosh Javale was also recorded u/s 164 of Cr.P.C wherein he has not referred to the involvement of applicant in the said crime. Learned counsel further submitted that the applicant has filed the application for bail on the ground of parity. He pointed out the order passed by this Court in Bail Application No.1369 of 2017 granting bail to co-accused Akash Zhanjorkar and other order passed by this Court in Bail Application No.889 of 2018 granting bail to Ajij @ Ajju Sansar Chandaliya. It is submitted that the said accused were granted bail primarily on the ground that their names were not reflected in the FIR and their involvement was shown in the subsequent statement. It is, therefore, submitted that the applicant is entitled for bail on ground of parity.

5. Learned APP submitted that there is sufficient evidence against the applicant. Although his name is not referred to in the complaint, the supplementary statement of the complainant was recorded wherein participation of the applicant is shown as person who had assaulted the deceased. It is further submitted that there is recovery of clothes from the applicant. It is further submitted that the statement of witness Nitin Jadhav was recorded during the course of investigation wherein he has stated that on 10th May 2016, the

applicant and other accused Sambhya had informed him that there was a quarrel and at that time clothes worn by them had stains of blood. The said witness has stated that the accused had requested the said witness to give them cloths and the witness had provided them cloths for changing. Learned counsel for applicant, however, countered that what is recovered from the applicant is black t-shirt and witnesses have stated that the applicant was wearing white t-shirt. Learned APP further submitted that specific role has been attributed to the applicant in supplementary statement of complainant. The statement of complainant recorded u/s 164 also refers to the involvement of applicant. It is submitted that the applicant is attributed overt act of assaulting the victim by using knife. However, it is noted that there is no recovery of knife from the applicant.

6. I have perused the charge sheet. It is pertinent to note that the complaint was lodged on 11th May 2016 by Gautam Survade. In the said complaint he has specifically named the persons who had assaulted the deceased by weapons. The details of assault are reflected in the complaint. It is alleged that after some of the accused had assaulted the deceased with weapons, other accused followed and had also assaulted the deceased by sword. The names of all those persons who had participated in the crime are clearly reflected in the FIR. However, in the supplementary statement, for the first time, the name of applicant is shown as the person who had participated in the assault. If the accused-applicant was known to the complainant, his name would have been reflected in the FIR. It is also pertinent to note that other eye witness to the incident who was accompanying the complainant at the time of incident namely

Santosh has also not named the applicant as the person, who has participated in the crime. His statement was recorded on 15th May 2016 after supplementary statement of complainant was recorded. In spite of the fact that complainant in his supplementary statement has referred to the name of applicant, other witness has not named the applicant as one of the participant in the assault. The statement of Santosh Javale was recorded u/s 164 of Cr.P.C, however, even in that statement, the said witness has not referred to presence and participation of applicant. The statement of complainant was recorded u/s 164 wherein names of several other persons including the name of co-accused Akash and Ajay Chandaliya were referred by him. It is pertinent to note that in the statement u/s 164, however, the witness has not attributed any specific overt act to the applicant. It is also pertinent to note that the prosecution is relying on the recovery of clothes and the statement of one Nitin. Learned counsel for applicant had pointed out the discrepancies qua clothes which were allegedly worn by the applicant at the time when he met the said witness and recovery of clothes. It would be necessary to consider that the co-accused Ajij Chandaliya is granted bail by this Court. While granting bail vide order dated 3rd May 2018 it was observed that complainant is eye witness to the incident. The said accused was not named in the FIR lodged by him nor he has been named by Santosh in his statement recorded on 15th May 2016. The other accused Akash is also granted bail by this Court vide Bail Application No.1369 of 2017 by order dated 16th November 2017. Learned APP, however, tried to submit that there were discrepancies in the recovery panchanama qua accused Akash which is one of the circumstance for granting bail to him. However, on perusal of the order granting bail to the said applicant it is apparent that the

circumstance that his name was not reflected in the FIR and he was implicated on account of subsequent statement is also one of the ground for granting bail to him. It is pertinent to note that name of Ajij and Akash were reflected for the first time in the supplementary statement of the complainant and thus the applicant's involvement is also reflected similarly to the said accused in the supplementary statement. Taking into consideration the aforesaid circumstances, case for grant of bail is made out. The investigation is completed and charge sheet is filed. The applicant is in custody for a period of more than two years.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.422 of 2018 is allowed and disposed off;
- (ii) The applicant be released on bail in connection with CR No.I-97 of 2016 registered with Ulhas Nagar Police Station on furnishing PR bond in the sum of Rs.30,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report the investigating officer of Ulhas Nagar Police Station on first Saturday of every month between 10 am and 11 pm till conclusion of trial;
- (iv) The applicant shall not tamper with evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (v) The applicant shall co-operate in the conduct of trial;
- (vi) The applicant shall file an undertaking with regard to clauses (ii) to (iv) in the Trial Court within two weeks of his release;

(vii) If there are two consecutive defaults in appearing before the Trial Court or appearing before the investigating officer of the concerned police station or if there is breach of any of the aforesaid conditions, the prosecution will be at liberty to apply for cancellation of the applicant's bail.

(PRAKASH D. NAIK, J.)

MST