

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1524 OF 2018

1. Sumit Kashinath Chaudhari, Age 33 years,

2. Swapnil Kashinath Chaudhari, Age 33 years,
Both R/o.C/5, Padmakar Colony,
Ankur Society, 1st Floor, Near Maharashtra Bank,
Thakurli, Dombivali (E), Tal.Kalyan,
Dist.Thane. Currently lodged at Kalyan Jail.

Applicants

versus

The State of Maharashtra

Respondent

Mr.Aabad Ponda I/by Harshad Sathe and Saurabh Butala for applicants.

Mr.R.M.Pethe, APP, for State.

Mr.Sachin B. Thorat for intervenor.

Mr.N.V.Jadhav, Police Inspector, Dombivali Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th September 2018

PC :

1. The applicants are seeking bail in CR No.I-138 of 2017 registered with Dombivali Police Station. The FIR was registered on 30th May 2017 for offences under Sections 302, 143, 147, 148, 149, 342, 323, 504, 506 read with Section 34 of Indian Penal Code and Sections 3, 25, 27 and 30 of Indian Arms Act.

2. The applicants were arrested on 2nd June 2017. The investigation is complete and charge sheet is filed. The prosecution case is that the informant used to carry out constructions work with

the help of his brother. He owns a chawl and receives rent from the same. There is an old dilapidated house of co-accused Shriram Bhagat in front of the house of informant. On 28th December 2017, Shriram Bhagat cut down two trees and wood thereof was thrown in front of the house of informant, which created hurdle for him and his family members. The younger brother of the informant Vikrant questioned about the same. He was abused and threatened by accused Shriram Bhagat, Mangesh Bhagat, Omkar Bhagat, Pankaj Mhatre and Pradip Naidu. It is further alleged that on 30th May 2017, the younger brother of informant Vikrant and his friends had taken his mother to hospital since she was not keeping well. They returned about at 12.30 p.m.. It was noticed that the accused Shriram Bhagat had parked JCB machine in front of house of informant on road, which created hurdle in their way. As such, the brother of informant asked the accused to remove the JCB machine. However, he was threatened by accused. At about 2 p.m on the same day, while complainant was having his lunch at his home with family members and friends, the accused Shriram Bhagat gave alarm to Vikrant. As such, the informant and others came down, wherein other accused had gathered. The accused Pankaj Mhatre was found armed with single barrel gun. The informant and Vikrant asked the accused Shriram Bhagat to take aside the JCB, which he refused to do so. Thereafter the accused persons encircled the complainant and his associates and gave alarm to kill. Accordingly Shriram Bhagat took out revolver from his waist and gave it to Mangesh and asked him to kill Vikrant. While complainant and his family members were attempting to save deceased, co-accused Mangesh fired by revolver at Vikrant, who suffered bleeding from abdomen and fell down. Thereafter the accused persons fled away in the four vehicles parked

in front of the house of complainant. The injured was admitted in hospital who later on succumbed to death. On the basis of these allegations, the FIR was registered for the aforesaid offences. The applicants were arrested. Other accused were also arrested. Since the date of arrest they are in custody.

3. Mr.Ponda appearing for applicants submitted that further detention of applicants is not necessary. It is submitted that as per the prosecution case, several accused were present at the spot of incident. No overt act of assault is attributed to the applicants. It is further submitted that the co-accused had allegedly taken out revolver from his waist and the same was handed over to the other accused, who shot at the deceased. He has sustained single fire injury. The other injuries were abrasions. Learned counsel drew my attention to the post mortem report and pointed out the nature of injuries sustained by the deceased. He also took me through statements of purported eye witnesses, whose version is similar and it is alleged that the applicants were present at the scene of offence and they along with other accused had encircled the injured/victim, which was followed by the incident of firing by revolver at the deceased. Learned counsel also pointed out that two other persons namely Indumati Chaudhary and Sangeeta Bhagat were also purportedly standing at the scene of offence and one of them being attributed the role of slapping one of the witness, had preferred application for anticipatory bail before this Court, which was allowed vide order dated 31st January 2018. It is submitted that vis-a-vis role attributed to the said accused and the present applicants, there cannot be any distinction. The applicants are in custody for more than a year.

4. Learned APP pointed out the statements of witnesses. He took me through the statements of eye witnesses. He pointed out the statement of Jyoti Kene and submitted that all the accused had gathered at the scene of offence. They had encircled the victim and did not allow them to move from the place. He also pointed out the statement of witness Varun Shetty and Dhanashree Kene in support of his submissions that there was a common object in committing the said offence. It was submitted that Section 149 of IPC can be invoked against the applicants considering the role played by the applicants in the said crime. It is submitted that they were closely related to accused Shriram Bhagat. The principal accused was in the construction business and there was rivalry between the family of deceased and the said accused. The applicants being closely related to Shriram Bhagat, they had a common object and pursuant to the said common object the deceased was liquidated. He also drew my attention to the statements of Durgabai Kene in support of his submissions. It is submitted that the applicants along with others had encircled the deceased and his family members and they were prevented from moving from that place. It is submitted that one of the accused was holding single barrel gun from inception. Therefore, under section 149 of IPC, the applicants can be held responsible for the death of deceased. It is submitted that one of the accused was holding a single barrel gun at the time of incident and thereafter the co-accused Shriram Bhagat took out the revolver from waist and handed over the same to other accused, who shot at the deceased Vikrant. It is submitted that the case is pending against applicant no.1 vide CR No.87 of 2010 for offences under Sections 143, 147, 323, 342, 365, 504, 506(1) of IPC.

5. Learned counsel for intervenor also opposed grant of bail to the applicants. It is submitted that there is enmity between the applicants, other accused and the family of deceased. It is submitted that the father of applicants was running a gang and was having criminal antecedents. It is submitted that the accused are in the construction business and at one point of time they were opposed by the family of deceased. As a result of it, there was enmity between both the families. It is submitted that the applicants are closely related to Shriram Bhagat. Learned counsel also pointed out that NC complaints were lodged against Sahil Bhagat and others on 9th July 2017. He also relied upon NC complaint dated 27th July 2017 lodged against sister of applicant no.1 and sister of co-accused Mangesh. Reliance is also placed on NC complaints lodged against unknown persons and one Balaram Bhagat. It is submitted that bail application may be rejected.

6. I have heard both sides. I have also gone through the documents on record. Learned counsel for applicants as well as learned APP has taken me through the statements of witnesses recorded during the course of investigation. On perusal of the same it is apparent that there was a quarrel/dispute between Shriram Bhagat, his brother and the family of first informant/deceased. The first quarrel which occurred on the date of incident, the applicants had not participated. The said incident was followed by another incident, which occurred at about 2 pm.. Several persons were named in the FIR showing their presence at the scene of offence. The allegations attributed to the applicants is that they were present at the scene of offence and they had amongst others encircled the

deceased and other witnesses and allegedly they were also prevented from moving from the scene of offence. Prima facie it does not appear that the applicants had knowledge that the co-accused was carrying the revolver and it was to be handed over to other accused to fire at the deceased. The mother of applicants and sister of the wife of Shriram Bhagat had preferred application for anticipatory bail before this Court. The mother of applicants viz Indumati had allegedly slapped one of the witness and other lady was part of the group who is also attributed similar role as that of the applicants. While allowing the said application this Court has observed that apart from mentioning the fact that the said applicants were present at the scene of offence with a further general allegation that they took part in helping the other accused persons in accosting Vikrant, no other overt act is attributed to the said accused. It is also observed that in the supplementary statement of the complainant, it was alleged that one of the said applicant had assaulted Vikrant. It is further observed that on perusal of entire material on record, prima facie, it appears that apart from their presence at the scene of offence, no other overt act is attributed to them in FIR and other statements is an exaggerated version of witnesses having tendency in implicating the said applicants as they are close relatives of other accused in the crime. On perusal of the statement of witness as stated above, apparently role attributed to the applicants is that they were also part of the mob who were present at the scene of offence and had encircled and/or restrained the victim and others. Learned APP has tried to invoke Section 149 of IPC. The Trial Court at the time of trial would look into the applicability of Section 149 of IPC while recording and appreciating the evidence. Learned counsel for intervenor had relied upon certain NC complaints which were lodged

against the relatives of applicants and others. It is pertinent to note that the applicants are in custody from the date of arrest. Learned counsel for applicants on instructions submits that the case which was registered against applicant no.1 has resulted in acquittal. There are no reported criminal antecedents against applicant no.2.

7. In the circumstances, case for grant for bail is made out. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1524 of 2018 is allowed and disposed off;
- (ii) The applicants are directed to be released on bail in connection with CR No.I-138 of 2017 registered with Dombivali Police Station on furnishing PR bonds in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- (iii) The applicants shall not tamper with evidence;
- (iv) The applicants shall report Dombivali Police Station once in a month on every first Friday between 10 am and 12 noon till further orders;
- (v) The applicants shall attend every date of hearing regularly before the Trial Court, unless exempted by Trial Court;
- (vi) The Trial Court shall not be influenced by the observations in this order during the trial.

(PRAKASH D. NAIK, J.)

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