

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

BAIL APPLICATION NO. 1968 OF 2018
with
CRIMINAL APPLICATION NO. 1024 OF 2018
IN
BA/1968/2018.

Nilesh S. Kudale

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Aniket Nikam I/b. Aashish Satpute for the Applicant.

Mr. S.R.Agarkar, APP. for the Respondent/State.

Mr. Pankaj More a/w. Nitin Kamble for the Intervenor Applicant in
APPP/1024/18.

Mr. M.P.Kadam, API, Dighi Police Station, Pune City, present.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : SEPTEMBER 07, 2018.

P.C.

1. This is an application filed under Section 439 Cr.P.C. by the aforesaid applicant, who is facing trial in Special Sessions Case No. 208 of 2018, pending on the file of the Special Judge Under MCOC Act and Addl. Sessions Judge, Pune. The applicant has been arrested in Crime No. 243 of 2017 registered with Dighi Police Station, Pune,

for the offences under Section 302 r/w. 34 of IPC.

2. Heard Mr. Nikam, the learned Counsel for the applicant, the learned Counsel for the intervenor and the learned APP for the State.

3. Mr. Nikam, the learned Counsel for the applicant submits that there is no prima facie material to show that the applicant was involved in inflicting fatal blows. He also submits that there is no prima facie material to show that the applicant had shared common intention to commit the offence. He has submitted that the investigation is completed and that the presence of the applicant is no longer required in custody.

4. Mr. More, the learned Counsel for the applicant submits that deceased Ganesh was brutally assaulted. He further submits that the material on record shows that the applicant had not stopped the co-accused from inflicting injuries and on the contrary, he was involved in giving kicks and blows, He submits that the relative of the first informant has already lodged a complaint against the applicant and his family members for threatening them. He submits that there is every possibility of the applicant interfering with the witnesses and/or threatening the relatives of the deceased in the event he is

released on bail.

5. The learned APP submits that the offence is of serious nature. He submits that there is material to show the involvement of the applicant in the crime, and hence the application be dismissed.

6. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

7. The records prima facie reveal that the aforesaid crime was registered pursuant to the FIR lodged by Suresh Gangne, brother of the deceased. It is true that the first informant had not witnessed the actual incident. Nevertheless, his statement prima facie indicates that he had received information that there was a fight and that his brother was being assaulted. He had visited the place of the incident and found his brother lying in a pool of blood. He was taken to the hospital, where he was declared dead.

8. The post mortem report reveals that there were several injuries over the body of the deceased in the nature of deep wounds, lacerated wounds, contused wounds over the vital parts of the body. The Medical Officer has opined that the death of Ganesh was due to head injuries. The medical evidence prima facie indicates that the

death of Ganesh was homicidal.

9. The statements of the eye witnesses prima facie reveal that on 9th December, 2017 the applicant, deceased and others had gathered to celebrate the birthday of the applicant-Nilesh. They cut the cake and thereafter proceeded to Mohor Hotel for dinner. The hotel was closed, hence they were sitting and chatting behind the hotel. It appears that there was an altercation between them over the issue of the deceased Ganesh referring to the applicant as “Nilya”. The statements of the witnesses indicate that thereafter the deceased had removed an iron rod from the car and on seeing this, the other co-accused Arvind Vanjari abused him and that the applicant and Pramod Shelar pushed him. The statements of these witnesses further reveal that while the deceased was brandishing the rod, it hit against the head of the co-accused Tushar Thorat. This incident resulted in the applicant and the other co-accused abusing and assaulting Ganesh by kicks and blows. The material on record reveals that when they reached near Datta Mandir(Temple), the co-accused Arvind Vanjari gave a blow of iron clutch and that Tushar Thorat gave about 25-30 blows of iron rod on the head of Ganesh.

10. Thus, the material on record prima facie indicates that the deceased, and others had gathered to celebrate the birthday of the applicant and that there was altercation over a trivial issue which resulted into a scuffle and ultimately into a brutal incident of assault. The records reveal that that applicant had not inflicted fatal blows on the deceased Ganesh. He was involved only in assaulting Ganesh by kicks and blows. Though the prosecution has sought to fasten vicarious liability with the aid of 34 IPC the question whether the applicant shared a common intention will have to be decided on merits of the matter.

11. The investigation in the case is complete and chargesheet has already been filed. Furthermore, the applicant is a permanent resident of Pune and there is no chance of the applicant absconding or thwarting the course of justice.

12. Considering the above facts and circumstances, in my considered view, this is a fit case for enlarging the applicant on bail on the following terms and conditions:-

(i) The application is allowed;

- (ii) The applicant Nilesh Kudale, who is facing trial in Special Sessions Case No.208 of 2016, on the file of the learned Addl. Sessions, Pune, is ordered to be released on bail on furnishing bail bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the learned Addl. Sessions Judge, Pune;
- (iii) The applicant shall report to the Dighi police station on the first Monday of every month until further orders;
- (iv) The applicant shall not interfere with the complainant and the other witnesses in any manner;
- (v) The applicant shall provide his permanent as well as temporary address, if any, and his contact details to the Investigating Officer and in the bail bond;
- (vi) The applicant shall not change his residential address without prior intimation to the Investigation Officer.

13. The application is disposed of in above terms. Suffice to say that, the observations made while disposing of the present application shall not be construed as expression on merits.

14. In view of disposal of the bail application, Criminal Application No. 1024 of 2018 does not survive and the same is accordingly disposed of.

(ANUJA PRABHUDESSAI, J.)