

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

CRIMINAL BAIL APPLICATION NO. 1967 OF 2017

Sagar Vishnu Dalbhagat ... Applicant
Vs.
The State of Maharashtra ... Respondent

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Mr. Aniket Nikam I/by Mr. Aashish Satpute for the applicant
Mr. Y.Y. Dabke, APP for the Respondent-State

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**CORAM : PRAKASH D. NAIK, J.
DATE : 15th OCTOBER, 2018.**

P.C.

1. This is an application for bail in C.R. No. I-283 of 2015 registered with Mahatma Phule Chowk Police Station for offences under Sections 302, 307, 452, 143, 144, 147, 148, 363, 342, 323, 504, 506, 506(II) of Indian Penal Code.
2. The prosecution case is that the informant Kirti Baksh is a trans-gender. The FIR was lodged on 17th March, 2015. It is alleged that in the intervening night of 16th March, 2015 and 17th March, 2015 at about 2.45 a.m., while the informant was sleeping in her room with her friends David Patrick Manvel, Padmakar and Pramod @ Pamya, the informant heard the sound of knocking the door of her house. The informant then asked as to who was knocking the door. At that time witness Rajkumar Bharti who was

known to the informant replied that he is knocking the door. The informant then opened the door of her house. At that time 10 to 15 unknown persons entered into the room. They pushed Rajkumar Bharti and assaulted the informant. Thereafter, the accused with the help of torch of mobile phone started assaulting David with the help of sword and chopper. David sustained serious injuries. At that time Padmakar intervened and he was also assaulted by the accused with sword and chopper which has caused serious injuries to him. Pramod @ Pamyra was frightened and managed to hide himself in Mori. The assailants then left the place of assault. The injured David succumbed to the injuries. Padmakar was taken to the hospital, where he was declared dead. In pursuant to registration of FIR, investigation proceeded and several accused were arrested. They were also identified by the witnesses. On completing investigation, chargesheet was filed against the arrested accused.

3. The applicant was arrested on 26th October, 2016. The identification parade qua witness Rajkumar Bharti was held on 7th November, 2016. The said witness had purportedly identified the applicant.

4. The applicant preferred an application for bail before the

Court of Sessions. Said application was rejected by order dated 12th June, 2017. On completing investigation against the applicant, supplementary chargesheet was filed against him.

5. Learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The applicant has not been named in the First Information Report nor in the statement of the eye witnesses which were recorded immediately after the incident. It is submitted that the statement of Rajkumar Bharti was recorded on 18th March 2015 in which he had not referred to the involvement of the applicant. The supplementary statement of the said witness was recorded on 24th May, 2016 wherein he has referred to name of one of the accused as Sagar and attributed the general overtact to him alongwith the other accused. The identification parade was conducted on 7th November, 2016 i.e after a period of more than one year from the date of the incident. It is submitted that there is no evidence of identification of the applicant by the other eye witnesses to the incident. It is further submitted that in pursuant to identification parade the statement of witness Rajkumar Bharti was not recorded by the police to indicate as to what role was played by the applicant in the alleged crime. The co-accused who has played the

similar role has been granted bail by the Sessions Court as well as this Court. It is submitted that the applicant is in custody from 26th October, 2016 and further detention is not necessary.

6. Learned APP submitted that the applicant is involved in a serious crime. Two persons were murdered by the accused with the help of weapons like sword and chopper. It is submitted that the statement of Rajkumar Bharti was initially recorded on 18th March, 2015 in which he has stated that several accused were involved in assaulting deceased David and Padmakar with the aid of weapons like chopper and sword. It is submitted that the statement of Rajkumar Bharti was subsequently recorded in which he has named the applicant as one of the accused who has participated in the assault. It is submitted that the statement of said witness was supported by identification parade conducted on 7th November, 2016 in which the said witness has identified the present applicant. It is submitted that the applicant was not available at the earlier point of time and he was arrested subsequently. It is therefore prayed that the application for bail be rejected.

7. I have perused the chargesheet. The FIR was lodged on 17th March, 2015. The complainant had referred to the persons who

had assaulted and has named some of the assailants. He has also referred to four to five unknown persons. Statement of Rajkumar Bharti who was forced to show the house of the informant and the deceased was recorded immediately after the incident on 18th March, 2015. However, in his statement he has not referred to the name of the applicant. However, for the best known to the investigating machinery, his subsequent statement was recorded on 24th May, 2016 i.e after a period of about one year from the date of incident. In the said statement, he has referred to the name of Sagar and stated that his surname is not known to him. In the said statement however, the witness has not attributed any specific overtact to the applicant. The identification parade was conducted on 7th November, 2016 i.e after a period of about one and half year from the date of incident. Considering the fact that the statement of the said witness was recorded after one year in which he has given the name of applicant, the applicant cannot be subjected to further detention. There is no identification parade qua first informant and other eye witness Pramod Gosavi. The statement of Pramod Gosavi was recorded on 17th March, 2015. The informant and the said witness has not given name of the applicant in their statement. Statement of Jagdish Khot was also

recorded after the incident. He is the first witness who had interacted with the assailants in the vicinity of the house of the deceased. He has not named the applicant as one of the assailant. It is also pertinent to note that the pursuant to the identification parade the statement of Rajkumar Bharti has not been recorded to indicate as to what role was played by the applicant in the alleged incident of assault. There is no recovery of weapon at the instance of the applicant. The applicant is in custody since last two years. Co-accused Mobin Abdul Rafiq Sheikh has been granted bail by this Court whereas other accused Anil Kashinath Chavan and Santosh Wakode were granted bail by the Sessions Court. Considering the nature of evidence against the applicant, case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Bail Application is allowed;
- ii. Applicant is directed to be released on bail in C.R. No. I-283 of 2015 registered with Mahatma Phule Police Station on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. Applicant shall report concerned Police Station once in a month on first Saturday between 10 a.m to 12 noon till conclusion

of trial;

iv. Applicant shall not tamper with the evidence and/or influence the prosecution witnesses;

v. Bail Application stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair
Digitally
signed by
Sachidanand
Kuttan Nair
Date: