

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

BAIL APPLICATION NO.2447 OF 2018

Ganesh Anandrao Deshmukh

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Arjun Singh Thakur I/b. Global Juris Consults for the Applicant.
Mr. Ajay Patil, APP for the State.

CORAM : ANUJA PRABHUDESSAI,J.

DATED : OCTOBER 10, 2018.

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid applicant, who has been arrested in Crime No. 149 of 2018 registered with Karad Taluka Police Station, Karad, for offences under Section 302, 323, r/w. 34 of Indian Penal Code.

2. Heard Mr. Singh, the learned Counsel for the applicant. He submits that the incident had occurred at spur of moment as there was grave situation and provocation by the first informant. He submits that the applicant had no intention of committing murder. He further submits that the chargesheet is already filed and the

presence of the applicant is no longer required for the purpose of interrogation. He has relied upon the decision of the Apex Court in Sidharam Satlingappa Mhetre vs. State of Maharashtra & Ors. 2010 DGLS (SC) 981 and the decision in the case of Budhi Singh vs. State of H.P. 2012 DGLS (SC) 704.

3. Shri Patil, the learned APP for the State, submits that the material on record prima facie reveals that the applicant has intentionally stabbed the first informant-Sushant More. There is no prima facie material to show that the incident had occurred at the spur of moment. The applicant had himself raised quarrel and that he was aggressive. The applicant had inflicted blows on the vital part of the body and from this fact, it can be gathered that the applicant had intention of causing death. He has further submitted that even otherwise, the ground raised by the applicant is a matter of defence to be decided on the merits of the matter at the stage of trial and not at the stage of bail.

4. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

5. Before advertng to the facts of the case, it would be relevant to

mention that in the case of Sidhharam Mhetre & Ors,. The Apex Court has laid down the criteria of bail in non bailable cases which read thus:

“i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

Vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail. “

6. In the instant case, the aforesaid crime was registered pursuant to the FIR lodged by one Sushant More. A perusal of the said report prima facie reveals that on 3.4.2018 at about 5.p.m. the first informant was standing at the bus stand. The applicant went near him and questioned him as to why he was looking at him and questioned him “lai masti ali kai” and thereafter started assaulting him. The first informant's elder brother Umesh More came to the spot and intervened. In the meantime Shivam More also came to the spot and he handed over a knife to the applicant. It is stated that the applicant stabbed Umesh with the knife. As a result Umesh sustained injuries. He was shifted to the hospital. Said Umesh expired due to the injuries sustained in the incident.

7. The statements of the witnesses Rajesh Sambhaji Desai and

Omkar Bapurao More also prima facie reveal that the applicant herein had assaulted the first informant. Their statements further reveal that Shivam More- a juvenile in conflict with law, handed over a knife to the applicant and that the applicant took the knife and stabbed said Umesh More. This material on record prima facie indicates that the applicant stabbed Umesh More by means of a knife. The post-mortem report prima facie reveals that the injuries were serious and that the death of Umesh was due to hemorrhagic shock due to injury to liver and left lung.

8. The medical report prima facie reveals that the applicant had inflicted blows of knife on the vital part of the body. The FIR as well as the statements of the eye witnesses do not show that there was any situation of grave provocation on the part of the deceased or the first informant so as to place the applicant into such a situation so as to lose his self-control. Even otherwise, the grounds raised by the applicant is in the nature of defence, which in the absence of any material on record cannot be considered at this stage.

9. Having considered the facts and circumstances of the case, in my considered view there are reasonable grounds to believe that the

applicant is involved in committing the crime which is punishable with death or life. Though chargesheet is filed, trial has not commenced and releasing the applicant on bail at this stage can therefore jeopardize the trial. In the circumstances, the application has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)