

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.840 OF 2019

Sachin Sambhaji Thorat	]	... Applicant
Versus		
The State of Maharashtra	]	... Respondent

Mr. Tejas Hilage, Advocate for the Applicant.
Mr. S.S. Pednekar, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 30th JULY, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.73/2017 registered with Jaysingpur Police Station, District Kolhapur u/sec. 302, 147, 148, 504 r/w 149 of I.P.C. and u/sec.4 r/w 25 of the Indian Arms Act.

2. The FIR is lodged by one Haider Mujawar on 27/03/2017 in respect of the murder of his brother Isakali. He has stated in his FIR that, on 26/03/2017 at about 9.00 p.m., his brother Isakali was murdered by 10 to 12 persons by assaulting him with swords, axes, sickles etc. The first informant has mentioned that, in the year 2012, one Uttam Thorat was murdered and for that offence the first informant as well as his deceased brother Isakali were accused. At the

conclusion of that trial, they were acquitted from the matter. The FIR mentions that, the first informant had not seen the incident of assault on Isakali. However, one Vaibhav Kumar Mandale who was the driver had seen the incident. In the concluding paragraph of the FIR, names of 8 persons were mentioned which includes name of the present applicant as one of the assailants who had committed assault on Isakalai.

3. The applicant was arrested on 27/03/2017. The investigation was carried out and the charge-sheet was filed. The charge-sheet contains statement of eye witness Vaibhav Kumar Mandale who has specifically named the applicant and has described his specific role. Besides this, there is statement u/sec. 27 of the Indian Evidence Act given by the present applicant. Based on this, two axes were recovered from the pipes near Railway track, Tardal. There is statement of witness Vaibhav Kumar Mandale recorded u/sec. 164 of Cr. P.C. In the said statement he has described the incident and assault on the deceased. However, he has not named the present applicant as one of the assailants. He has not named any of the assailants though the statement is recorded on 31/03/2017.

4. Heard Mr. Tejas Hilage, Ld. Counsel for the Applicant and Mr.S.S. Pednekar, Ld. APP for the State/Respondent.

5. Mr. Hilage submitted that, the present applicant is implicated falsely because of the previous enmity and assault on the suspicion because the deceased and the first informant were accused in the trial held for the commission of murder of the applicant's brother. He submitted that, the informant had narrated the incident as told by Vaibhav Kumar Mandale. The applicant's name was not mentioned while describing the incident. However, in the concluding paragraph of the FIR, names of various assailants including that of the applicant were mentioned. He submitted that, the statement u/sec. 164 of Cr. P.C. carries more weight than the statement recorded u/sec. 161 of Cr. P.C. and therefore if the applicant's name is not mentioned in the statement recorded u/sec. 164 of Cr. P.C., this is a very important circumstance in favour of the applicant. He submitted that the weapons were recovered from the place which was accessible to all.

6. As against these submissions, Ld. APP submitted that the name of the applicant was mentioned immediately in the FIR itself. The eye

witness Vaibhav Kumar Mandale has also named the applicant in his first statement dated 27/03/2017. He submitted that, recovery of the weapons is an incriminating circumstance against the applicant.

7. I have considered submissions. The postmortem notes show that the deceased had suffered as many as 16 serious injuries and all of them were mainly on the face, chest and hands. The deceased was brutally murdered. The cause of death was attributed to multiple grievous incised wound to vital organs.

8. The statement of the eye witness Vaibhav Kumar Mandale recorded on 27/03/2017 is an important statement in the charge-sheet. That statement is recorded immediately on 27/03/2017. He is the sole eye witness in the case. He has stated that on 27/03/2017 at around 8.15 p.m., he was engaged by the deceased Isakali for bringing his tractor for carrying stones. At about 9.30 p.m., when they were loading their truck with big stones, the applicant stood in front of the deceased with axe in his hand. He was accompanied by 7 to 8 persons. The applicant threatened Vaibhav Mandale. The applicant assaulted the deceased with his axe. The witness Vaibhav Mandale

got scared and ran away from the spot. He informed one Uday Mane and thereafter informed others.

9. This statement of Vaibhav Mandale is a serious incriminating statement against the present applicant, though in a subsequent statement recorded u/sec. 164 of Cr. P.C. this witness has not named any of the assailants. This statement recorded immediately on 27/03/2017 cannot be ignored at this stage. Coupled with this fact, there is recovery of weapon at the instance of the present applicant. The weapons were concealed in a pipe near the railway track. Therefore, concealment of weapon and recovery of weapons at the instance of the present applicant is also an important corroborative piece of evidence. In this view of the matter, considering seriousness of the offence no case for bail is made out. Hence, the following order.

ORDER

Application is rejected and stands disposed of accordingly.

(SARANG V. KOTWAL, J.)