

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

CRIMINAL BAIL APPLICATION NO.1183 OF 2019

Sourabh Bhaskar Yadav

.... Applicant

versus

The State of Maharashtra

.... Respondent

.....

- Mr.Umesh Mankapure, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.
- HC Mr.V.D. Mane, Miraj Police Station, Sangli, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.436/18 registered with Miraj Police Station, Sangli, under sections 302, 363, 341, 342 r/w 34 of the Indian Penal Code.
2. The offence is lodged on 05/11/2018. The Applicant was arrested on 12/11/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. The FIR is lodged by one Shahaji Tribhun Kale who was father of the deceased Sharjan. He has stated that on 03/11/2018 at about 07.30 p.m. he and his son Sharjan had gone to a food stall. At that time, Sharjan's friend Shital Bhandari came there. While they were going back, two four wheelers came there. About 7 to 8 persons got down from those cars. Sharjan and Shital were forcefully made to sit in one of the cars and were taken away forcefully. The informant came home and informed his wife and daughter-in-law. After some time, he received a phone call on his mobile phone. The caller identified him as Dinesh Chinchkar. He demanded Rs.50,000/- for releasing Sharjan. According to the caller Sharjan had cheated him for Rs.50,000/- by giving fake gold. The informant requested him to release Sharjan. On 04/11/2018 at about 07.30 p.m. he received an phone call informing him that a dead body was lying on Kalambi Siddhewadi Road. He came to know that it was the dead body of Sharjan. He went to Civil Hospital, Miraj and identified his body. Thereafter he lodged his FIR.

4. The deceased had suffered 22 injuries and the cause of death was mentioned as shock and haemorrhage due to multiple injuries sustained.
5. The investigation was conducted and the charge-sheet was filed. The charge-sheet contains the statement of Shital Bhandari who was the eyewitness to the entire incident. His statements were recorded u/s 161 as well as 164 of Cr.P.C. He is the main important witness for the prosecution. He has stated that after they were abducted as mentioned by the first informant, they were taken together from Khanderajuri towards Kuktoli village. The deceased and this witness were kept in the same Omni Car at a secluded spot. They were taken down and the accused assaulted both these victims with sticks, fist and kick blows. While beating they were saying that the deceased had cheated them for Rs.50,000/-. Sharjan was brutally assaulted. One of them called the father of the deceased. This call, as reflected in the FIR, was made by one Dinesh Chinchkar. Sharjan had suffered severe injuries. Thereafter they were again

taken in that car. They had reached Siddhewadi village. The car was travelling towards Miraj. Sharjan was thrown out of the car near an agricultural field. This witness was taken ahead and was left on Tanang Cross Road. This witness took lift from a two wheeler rider. He had got scared and immediately went to his uncle in Karnataka. He was informed by his mother that Sharjan was found dead, where he was thrown. Both these statements narrate the same story. His statement u/s 164 of Cr.P.C. mentions that on 12/11/2018, the police had called him to police station and he was shown the accused who had assaulted the deceased Sharjan. At that time he was shown seven persons and he had identified all of them at the police station.

6. The investigation papers further show that this witness was made to identify the suspects in a test identification parade held on 15/12/2018 and at that time again he identified seven accused including the Applicant.

7. Apart from that, there are allegations that mobile phone number of the SIM card which the Applicant was using,

had the same tower locations where the deceased and this witness was taken at the time of incident.

8. Heard learned Counsel Mr.Umesh Mankapure for the Applicant and learned APP Ms.S.S. Kaushik for the State.
9. Learned Counsel for the Applicant submitted that the identification of this Applicant in test identification parade is meaningless because the Applicant and others were already shown by the police to the eyewitness Shital in the police station itself. He submitted that the SIM card was not registered in his name but was registered in the name of one Aniket Dudhal. There is no independent evidence to show that the Applicant was using that number. Aniket's statement even at this stage cannot be relied on, because this particular number was registered in the name of Aniket and he should have been a natural suspect instead of the Applicant.
10. Learned APP countered this submission and added that there was no reason for the said witness Aniket Dudhal to state

that this particular number was used by the Applicant. She submitted that the Applicant was identified in the test identification parade and at this stage there are sufficient circumstances against the present Applicant showing his complicity in the offence.

11. I have considered these submissions. Undoubtedly it was a brutal assault and for a sum of Rs.50,000/- the deceased had lost his life. There were 7 to 8 accused persons. At this stage, the incident cannot be doubted. However, the investigation in this case is not carried out with due diligence. As rightly submitted by Mr.Mankapure, the arrested accused were shown to the eyewitness in the police station itself. This vitiated the subsequent test identification parade held by the investigating agency to enable the eyewitness to identify the accused. Once the culprits were shown to the identifying witness, the test identification parade lost all its significance. Therefore, the only circumstance which the prosecution perhaps can now use against the present Applicant is, use of particular

phone number i.e. 9373739911. According to the prosecution case, the tower location of this SIM number shows that the user of this number was in the same area, at the same time, when the incident had taken place. This otherwise would have been a strong circumstance against the Applicant, but for the fact there is no independent evidence or material to show that the Applicant was using this particular number except statement of Aniket. This witness has stated that he had given this SIM card for use to the present Applicant. This particular number and SIM card was registered in the name of this witness Aniket. Therefore there is considerable force in this submission of Mr.Mankapure that this witness is trying to shift the blame on the Applicant and he should have been the natural suspect in this case. His statement is recorded belatedly on 18/01/2019. In this view of the matter, at this stage, there is sufficient doubt created in the prosecution case against the present Applicant. However, all these observations are made for the purpose of decision of this bail application only and the trial Court shall not be influenced by all this discussion and shall take independent

decision on the basis of evidence led by the prosecution before it. However, at this stage, considering the above discussion, I am inclined to grant bail to the Applicant. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.436/18 registered with Miraj Police Station, Sangli, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned Police Station once in a month till conclusion of the trial.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)