

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1428 OF 2019

Rohit Rajendra Koli, Age 28 years,
Occ.Service, R/o.2832, B Ward,
Isolation Hospital Road, Kolhapur.

Applicant

versus

The State of Maharashtra

Respondent

Mr.Piyush Toshnival i/by Manoj A. Patil for applicant.

Mr.S.H.Yadav, APP, for State.

Mr.Umesh Arun Dhanawade, Police Constable, Vaggaon Police
Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 2nd December 2019

PC :

1. The applicant is seeking bail in CR No.10 of 2018 registered with Peth Wadgaon Police Station, Kolhapur for offences punishable under Sections 302, 394 r/w 34 of Indian Penal Code.

2. The prosecution case is that on 29th November 2017 in the midnight at about 1.00 am the applicant, co-accused Sumit Sawant had assaulted the deceased Nikhil and they robbed him of gold chain, motorcycle and cell phone. The injured was taken to hospital where he was declared dead. During the course of investigation statements of two persons who were alleged to be the eye witnesses of incident of assault, were recorded. The applicant was arrested on 12th January 2018. On completing investigation charge sheet is filed.

3. I have perused the charge sheet. The complaint was lodged by the father of deceased. Initially accidental case was registered on 30th November 2017. In the statement of complainant dated 30th November 2017 it was mentioned that his son (deceased) had left the house on 29th November 2017 with motorcycle along with his friend Rohit Koli (applicant). In the concluding paragraph of the said statement it is also mentioned that the co-accused Sumit Sawant was also with them. Since the son of the deceased did not return, the complaint was registered as ADR. However, the FIR was lodged on 10th January 2018 alleging offence u/s.302, 394 r/w 34 of IPC. The said statement mentions that on 29th November 2017 the complainant's son had left the house and did not return. His son was admitted to CPR hospital. The applicant had also visited the said hospital and on inquiry had stated that all of them were in drunken condition and in the night the motorcycle slept and they had sustained injuries. The injured was treated in the hospital and was declared dead. The complainant, however, suspected that the deceased was killed by the accused. It is relevant to note that the FIR was lodged on 10th January 2018 although suspicious circumstances were known to the complainant on 28th November 2017. There is improvement in the version of complainant which is apparent from the statement dated 10th January 2018. The investigation proceeded and statement of witnesses were recorded. The statement of Prashant Alkunte was recorded on 26th January 2018 and other witnesses Ganesh Lakade and Vishal Mane were recorded on 29th January 2018 and 2nd February 2018 respectively. The said witnesses were initially eye witnesses to the incident and they have stated that two persons were seen assaulting the deceased in the night at about 1 o'clock. The witness Prashant Alkunte was

put up to test identification parade and he identified the applicant and co-accused Sumit Sawant. The statement of Mahesh Naik was recorded on 30th November 2017 immediately after the incident. He has stated that on the night of 29th November 2017, the applicant had informed him that he was under intoxication with his friends and they met with an accident. The applicant told him that his friend is lying injured on the highway and he should take him from the said place. However, the injured was not found at the place. The applicant had taken him to hospital. The witness had also stated that the applicant was in intoxicated condition and could not even walk due to intoxication.

4. Learned advocate for applicant submitted that it is a case of accident. There is improvement in the version of complainant and the case u/s 302 of IPC is completely false. There is no recovery of any weapon. The witnesses have not specified as to how the victim was assaulted. The statement of eye witnesses were recorded belatedly. There is recovery of mobile and motorcycle from the possession of applicant when they visited the hospital, which is not discovery u/s 27 of Evidence Act. It is further submitted that there is no evidence to substantiate charge u/s 302 of IPC. Two other witnesses were not put up for identification parade. The identification parade was conducted belatedly on 14th March 2018 after about three and half months of incident. He further submitted that the co-accused Sumit Sawant, who is ascribed similar role, has been granted bail by Sessions Court.

5. Per contra, learned APP submitted that it is a case of murder. There are three eye witnesses to the incident. The conduct of applicant and other accused was suspicious. The deceased had

sustained injuries. The applicant had been identified by one of the witness.

6. On perusal of the documents and from the narration of prosecution case, as stated above, it is apparent that the incident had occurred in the night of 28th November 2017 and 29th November 2017. The complainant has lodged the complaint after the deceased was admitted in the hospital and was declared dead. The said complaint refers to the fact that the deceased had left house along with accused. There is no reference of the applicant visiting the hospital on the same day and providing material information, as reflected in the FIR. Although the complainant suspected foul play on 30th November 2017 itself, the FIR was lodged on 10th January 2018. The statement of eye witnesses were recorded belatedly. They have stated that two persons were assaulting the injured who was identified by photograph. One of them had identified the applicant as assailant. The parade was held belatedly. The statement of said witness was also recorded belatedly. The post mortem report indicate that the deceased had sustained four injuries in the nature of (i) sutured linear wound of size 4 cm, (ii) abrasion of size 5x2 cm over mid frontal region, (iii) abrasion over left side of frontal region of size 2x2 cm and (iv) contusion of size 8x5 deep. The cause of death is mentioned as head injury. However, final opinion is kept pending for viscera examination and blood reports. The charge sheet also contains opinion sought by the investigating officer from Forensic Department. The opinion was sought to ascertain whether the incident had caused on account of assault or by accident. The Department of Forensic Medicine submitted a report that possibility of injuries sustained by the deceased cannot be ruled out by accident. The statement of one of the witnesses as stated above to whom the

applicant had taken to the place of incident, also fortifies the submission of learned advocate for applicant that it can be a case of accident. The applicant is in custody from 12th January 2018 i.e. almost for a period of two years. His further detention is not called for and case for grant of bail is made out.

7. Hence, I pass following order :

ORDER

- (i) Criminal Bail Application No.1428 of 2019 is allowed and disposed of;
- (ii) The applicant is directed to be released on bail in connection with CR No.10 of 2018 registered with Peth Wadgaon Police Station, Kolhapur District, on furnishing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report Peth Wadgaon Police Station once in a month on every first Saturday between 10 am and 12 noon till further orders;
- (iv) The applicant shall attend Trial Court proceedings regularly, unless exempted for some reason by the Trial Court;
- (v) The applicant shall not tamper with evidence.

(PRAKASH D. NAIK, J.)

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