

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3111 OF 2018

Arun Sharad Bhosale	..Applicant.
V/s.	
The State of Maharashtra	..Respondent.

Mr.Kuldeep Patil for the applicant.

Ms.S.S. Kaushik, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 24, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP for the State.

2. The applicant after his arrest on February 24, 2018 in crime No.28/2018 for offence punishable under sections 302, 364, 342, 201, 324, 504, 506 read 34 of the Indian Penal Code 'the IPC' for short) registered with M.I.D.C. Kupwad police station, District Sangli is charge-sheeted.

3. The applicant is the younger brother of Kavita, who was married to the main accused Ramesh.

4. It appears that Kavita had extra marital relations with

deceased Sagar.

5. It appears that deceased Sagar had presented a mobile phone so as to facilitate communication between Kavita and Sagar. Ramesh, husband of Kavita twice detected the said phone which has resulted in physical assault on Kavita, as a consequence Kavita left the house of Ramesh, her husband and ran away with Sagar.

6. On February 19, 2018 Kavita along with deceased Sagar left the place of her husband and it is the present applicant along with her husband Ramesh met her, along with co-accused on the night of February 22, 2018. Immediately thereafter, the present applicant co-accused Ramesh and Vishal assaulted Sagar and Kavita, made them board an autorickshaw and took Kavita and Sagar to the house of the present applicant. During the travel, main accused Ramesh, Vishal and the present applicant alleged to have assaulted Sagar. It is after all these people reached the place of applicant, that Sagar was declared dead, resulting in the crime in question.

7. Learned counsel for the applicant makes two-fold submission:-

a) The eye witness to the incident, Kavita has attributed

restricted role to the applicant to the incident of assault on deceased Sagar by stick and kicks which would relate to the cause of death as is reflected in the post mortem report.

b) The statement recorded of the eye witness under section 161 of the Criminal Procedure Code ('Cr.P.C' for short) are not in tune with the subsequent statement recorded under section 164(5) of Cr.P.C. Mr.Patil, learned counsel for the applicant volunteers that the applicant be put to stringent conditions and he shall abide by the same. Moreover, the co-accused Vishal is already released on bail. As such, it is claimed that the applicant is entitled to be released on bail.

8. Learned APP oppose the claim and her submission is, statement under section 161 of Cr.P.C. was recorded of the eye witnesses and since the investigating officer was confident that the witnesses would stand by what has been stated in the statement under section 161 of Cr.P.C. in the statements under section 164 of Cr.P.C., the rituals were followed. However, the said witnesses, including Kavita have stated contrary to what has been stated in the statement under section 161 of Cr.P.C. before the Magistrate. She would urge that same needs to be ignored at this stage of the

proceedings as the contradictions therein can be appreciated only after oral evidence in the matter is recorded.

9. The next limb of submission is, section 34 of IPC is invoked against the applicant and plain reading of the statement of eye witness to the incident, namely Kavita, in categorical terms would satisfy the ingredients thereof. As such, according to her, the application needs to be rejected as there is direct evidence available on record connecting the present applicant to the crime in question.

10. Learned APP would also try to impress upon the Court to take into account a case of honour killing as the applicant is real younger brother of Kavita, who left with deceased Sagar. As sch, the offence is deserved to be view seriously and independently.

11. Considered rival submissions.

12. The submission of learned APP to the extent of non appreciation of contradictions in the statements recorded under section 161 and 164 of the Cr.P.C. needs to be accepted and as such, on the said issue, this Court is not with the applicant to order his release. As such, the said submission of the applicant needs to be rejected for the reasons that the same can be gone into after

appreciating the oral evidence recorded before the Court.

13. So far as the next limb of the submission of learned counsel for the applicant is concerned, the role attributed to the applicant is of assault by stick and kicks which cannot be termed to be the cause of death. Limited role to the aforesaid extent is alleged in the statement of Kavita, who is a eye witness.

14. If the necessary ingredients of section 34 of the IPC are appreciated, it speaks of the act done by several persons in furtherance of their common intention. Apex Court in the matter of *Harjit Singh V/s. State Of Punjab*¹ had an occasion to consider the issue of the state of mind of an accused while committing the crime to be charged under section 34 of IPC. The Apex Court has gone to the extent of observing that a common intention is state of mind of an accused person which can be inferred objectively from his conduct displayed in the course of commission of the crime in question.

15. In the backdrop of the aforesaid observation of the Apex Court, if the role and conduct of the applicant, who has been charged under section 34 of the IPC is appreciated, the act of the

¹ 2002 SCC (CRI) 1518

presence of the applicant along with co-accused Ramesh and Vishal, his relation with Kavita, who has eloped with Sagar can be inferred to mean that he had common intention to murder Sagar.

16. Kavita after she met the applicant and Ramesh along with deceased Sagar was made to sit in autorickshaw, was not assaulted by the applicant. It is Ramesh, her husband who assaulted her and deceased Sagar.

17. The only role attributed to the applicant is of assaulting Sagar with fist blows.

18. If the conduct of the applicant subsequent thereof is appreciated, the present applicant counselled sister Kavita and went with her to mother, whereas as the deceased remained with co-accused Ramesh and Vishal. There are no allegations against the applicant that the applicant by use of any weapon (stick which is recovered from him) has assaulted the deceased.

19. In the aforesaid backdrop, *prima facie* it can be inferred that the conduct of the applicant cannot be inferred to have satisfied the ingredients under section 34 of the IPC so as to infer his intention to commit murder of deceased Sagar. That being so, the application needs to be allowed. Hence the order :-

- i) The applicant be released on bail in Crime No.28/2018 for offence punishable under sections 302, 364, 342, 201, 324, 504, 506 read 34 of the Indian Penal Code registered with M.I.D.C. Kupwad police station, District Sangli upon furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount;
- ii) The applicant shall not influence the prosecution witnesses or tamper with the evidence;
- iii) The applicant since volunteers that he shall not stay with his sister till the conclusion of trial is accepted as an undertaking;
- iv) The application stands disposed of accordingly.

20. The findings recorded hereinabove is *prima facie* in nature and without appreciating the oral evidence, which will be recorded by the Sessions Court. As such, the Sessions Court may not be influenced by the findings referred hereinabove during the trial.

(NITIN W. SAMBRE, J.)