

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

CRIMINAL BAIL APPLICATION NO. 10 OF 2019

Pandurang @ Bapu Yeshwant Gandale ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Aniket Nikam for Applicant.

Mr. N. B. Patil, APP for Respondent – State.

Mr. Amit Walke, PSI, Mundhwa Police Station, Pune present in Court.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 14, 2019.

P.C. :

. In Crime No. 155 of 2018 for an offence punishable under Sections 302, 326, 109 read with Section 34 of the Indian Penal Code, the Applicant is seeking regular bail. The Applicant came to be arrested on June 27, 2018.

2. The son of the present Applicant namely, Kunal and his friend Yogesh appears to be co-accused. From the chargesheet it reflects that main role is attributed to Accused Nos. 1 and 2 i.e. son of the Applicant and his friend, whereas the present Applicant is for the first time named as

Accused pursuant to a supplementary statement of the complainant recorded on June 27, 2018.

3. In the aforesaid background, submission of the learned Counsel for Applicant is, apart from improvement in the story of the prosecution as could be inferred from supplementary statement of the complainant, the eye-witnesses to the incident have not named the Applicant as on Accused. The only reference *qua* the role attributed to the Applicant is his presence on the spot, that too based on hearsay theory.

4. *Per contra*, the learned APP opposed the claim on the ground that even if the supplementary statement is recorded after four days, there are justifiable reason for the same. According to him, since the wife of the deceased namely, Manoranjana Gandle was in mentally disturbed condition, she might not have named the Applicant.

5. Considered submissions in the light of the contents in the chargesheet. So far as the First Information Report dated 23rd June 2018 is concerned, same has specifically named the co-accused nos.1 and 2 with a specific role. It also narrates about an earlier incident which has resulted

into registration of crime against the Applicant at the behest of the deceased for an offence punishable under Section 324 read with Section 34 of the Indian Penal Code.

6. Apart from above, the improvement in the supplementary statement of the victim is not substantiated by the explanation as to why the Applicant was not named by her in an earlier statement which has resulted into registration of crime. The eye witnesses to the incident have not confirmed the personal presence of the Applicant on the spot and his active participation in the crime in question. The limited reference as regards the Applicant's involvement in the crime in question is based on the hearsay theory narrated by the other eye witnesses.

7. That being so, the Applicant has made out a case for grant of bail. Hence, the following order.

ORDER

(A) The Applicant be released on bail in Crime No. 155 of 2018 for an offence punishable under Sections 302, 326, 109 read with Section 34 of the Indian Penal Code, on executing PR Bond of Rs. 25,000/- with one or two sureties in the like amount.

- (B) The Applicant shall neither tamper the evidence of prosecution nor influence the prosecution witnesses.
- (C) If the Applicant is found involved in any similar type of offence, prosecution will be at liberty to approach before the learned Sessions Court for cancellation of bail.

8. Criminal Bail Application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)