

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

Cri. BAIL APPLICATION NO. 156 OF 2019

Kapil Suresh Mane

... Applicant.

V/s.

The State of Maharashtra

... Respondent.

Mr.S.V.Marwadi, Advocate, i/by N.M. Nadar for the Applicant.

Mr. Prashant Jadhav, APP for the State.

(Mr. Xavier Rego, PI, Dindoshi Police Station, is present.)

CORAM : PRAKASH D. NAIK, J.

DATE : MARCH 07, 2019.

PC :

1 The applicant is seeking bail in CR No. 284 of 2018 registered with Borivali Police Station, for the offence under sections 302, 323 and 34 of Indian Penal Code.

2 The prosecution case is that on 06.06.2018, the complainant and his cousin - Dilip Chauhan had visited the wine shop to purchase beer and at that time, co-accused Sunil Mane had also visited the said wine shop, who had stared at the complainant. This incident had occurred at 22.30 hours on 06.06.2018. The complainant (deceased) and Dilip had consumed beer and thereafter they had a dinner and then went for walk. On 07.06.2018, on the same night, at about 02.00

hours, the complainant (deceased) and his cousin Dilip went to the place of incident on motor-cycle. Sunil Mane caught hold of the deceased and applicant-accused also caught hold of the deceased and threatened him. Co-accused Vinod Mane gave blow of knife on the chest and thigh of the deceased. Dilip tried to intervene but he was assaulted by the accused with fist blows. The complainant- deceased sustained injuries by knife. He was taken to hospital. The FIR was registered on 07.06.2018. Thereafter, the complainant succumbed to the injuries. Statement of Dilip was recorded on 14.06.2018. On completion of investigation, chargesheet is filed.

3 The prosecution is relying on the statement of the deceased, which is stated, as dying declaration and the statement of eye witness – Dilip Chauhan, who was accompanying the complainant (deceased). Reliance is also placed on the statements of several other eye witnesses.

4 Learned counsel for the applicant submitted that there is contradiction in the statements of witnesses. According to him, if the version of the witnesses is to be believed, then there could not be any injury on the person of the victim i.e. the complainant. The role attributed to the present applicant is that he caught hold of the deceased. It cannot be said that there was any intention on the part of the applicant to commit murder of the deceased.

5 Learned APP, however, submits that the accused were aware that the deceased is likely to visit place of incident. The applicant-accused had aided and abetted the co-accused in assaulting the complainant and that there was common intention on part of the applicant and other co-accused to commit murder of the complainant.

6 I have perused the documents on record. The statement of the complainant indicates that the incident had occurred at 02.00 hours on 07.06.2018. The deceased was accompanied by cousin Dilip Chauhan. The applicant and co-accused started assaulting the complainant and during the assault, the applicant caught hold of the complainant and Dilip Chauhan. Thereafter the accused threatened the complainant and one Vinod Mane gave knife blow on the chest and thigh of the complainant. Dilip intervened but he was also assaulted by the accused. Statement of Dilip was recorded on 14.06.2018, although the incident is of 07.06.2018. On perusal of his statement, it appears that the incident of assault had occurred on 07.06.2018. He has stated that on 06.06.2018, he and the deceased had met and thereafter they went on two wheeler and on seeing the accused persons, the complainant (deceased) got down and tried to have conversation with the accused. The applicant caught hold of the complainant. Co-accused Vinod took out a knife and gave blow on the chest and right

thigh of the deceased, as a result the deceased sustained injuries.

7 Thus the role attributed to the applicant is that he caught hold of the deceased. Statement of Dilip indicates that during this scuffle the deceased fell down and he sustained injuries. The deceased was assaulted by the co-accused. It is debatable whether there was common intention on the part of the accused to commit murder of the complainant. The above witness stated that the blow of knife was given all of a sudden.

8 Considering the role attributed to the applicant and the factual matrix of this matter, case for grant of bail is made out by the applicant. Hence, I pass following order :

ORDER

- i. Bail Application No. 156 of 2019 is allowed and disposed of.
- ii. The applicant is directed to be released on bail in connection with CR No. 284 of 2018, registered with Borivali Police Station, on furnishing PR Bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

- iii. The applicant is permitted to furnish cash security in the sum of Rs. 25,000/- for a period of six weeks.
- iv. Applicant shall report to concerned police station once in a month, on first Saturday of month between 11 a.m. to 1 p.m. until further orders.
- v. The applicant shall not tamper with prosecution evidence.

(PRAKASH D. NAIK, J.)

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