

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

BAIL APPLICATION NO.528 OF 2019

Nilesh Rajkumar Gaikwad

....Applicant.

vs.

The State of Maharashtra

....Respondent.

Mr. R.V. Bansode for Applicant.

Mr. A.R. Kapadnis, APP. for State.

Mr. S.G.Patil, PSI from Chinchwad Police Station present.

CORAM : P. N. DESHMUKH, J.

DATE : 05th April, 2019

PC :

1. Heard learned counsel for applicant and learned APP. Copy of charge sheet is filed with application. Perused charge sheet. This application is for bail in CR No.240 of 2017 registered with Chinchwad Police Station for offences punishable under Sections 302, 364, 323, 324, 143, 147, 148, 149 read with 34 of the Indian Penal Code.

2. Learned counsel for applicant has submitted that on considering the report as well as statement of material witnesses, no

specific role of assault is attributed to applicant but his involvement is alleged to be general in nature as he was part of incident and was simply present along with co accused at different places and different time. By referring to post mortem notes, it is submitted that, deceased did of head injury of which co-accused Akshay is the author who in fact has confessed as such to complainant Kishore- uncle of deceased. It is further contended that according to post mortem notes deceased has sustained as many as 23 injuries however there are no injuries on vital part of the body. In the back ground of above submission, it is submitted that, application may be allowed by imposing conditions since applicant is student of aged 23 years having no criminal antecedents.

3. Learned APP. opposed application contending that, there is direct evidence against applicant and there is no reason for any of the witnesses to falsely implicate the applicant as all the co-accused as well as applicant are friends and in fact were also knowing deceased

Aaditya prior to and at the time of incident as well as to injured Prajkta who is also assaulted on her head and has therefore submitted that, merely because cause of death of deceased is due to head injury which is by co-accused Nilesh caused to him by assaulting on head by wooden bat by itself is no ground to allow the application.

4. In the light of submissions advanced as aforesaid, perusal of statement of Kishore and on the basis of which offence came to be registered would reveal that, on 11.7.2017 at about 5.00 p.m. Vishal and Siddharth friends of deceased Akshay came to the house of complainant and informed him, that applicant along with co-accused Akshay Gore, Dhiraj Shinde had took deceased with them in their car as deceased was found talking to Prajkta in her house due to which applicant and his above named friends got annoyed on Aditya. Accordingly complainant obtained cell number of co-accused Akshay More, from Vishal and spoke to him on phone when co accused confessed his assault on Aditya by wooden bat since he was talking to

Prajakta. In the background of above facts, it further reveals from the report that, in spite of complainant contacting Akshay thereafter he did not receive phone calls and thus, on calling Vishal was informed by him that Aditya was hospitalized and therefore, visits the hospital at Moshi, there Aditya had succumbed to injuries. Accordingly report came to be lodged naming applicant along with co accused Akshay More and Dhiraj Shinde.

5. Statement of Vishal materially corroborate the statement of complainant when he has stated that after complainant learnt about applicant and co accused taking away deceased in their vehicle from the house of Prajkta, complainant obtained cell number of Akshay More from him. Similar is the statement of Siddharth whose statement in fact, establish presence of applicant, after death of Aditya when he has stated that on the day of incident after 4.20p.m. when he was in the company of another friend Yash and Vishal near Milkmaid Bakery one white colour duster car owned by co accused Akshay and one Swift

desire arrived which was occupied by applicant along with accused persons who had jointly confessed to them that, in the morning at 11.30a.m. as deceased was found talking to Prajкта at her house, they had assaulted him and informed that he was lying in the back seat of duster vehicle, accordingly Siddharth went to the car and found Aditya lying in injured condition on the back side and was shouting, who accordingly along with Yash took him to Multi Specialty Hospital, Moshi, situated at Dehu road where he was declared dead. His statement also reveals information given to complainant by Vishal of assault of deceased by co accused Akshay, Dhiraj Gaikwad and Dhiraj Shinde having been annoyed on deceased for the reasons stated aforesaid.

6. Statement of Siddharth as aforesaid is corroborated by statement of Yash. In fact his statement would reveal oral dying declaration of deceased made to him immediately after incident as according to this witness as he was in the company of Vishal near

Milkmaid factory where two vehicles arrived as aforesaid which was occupied by co accused and applicant when Akshay informed assault by deceased and also informed that deceased was lying on the rear seat of duster. He claims to have seen Aditya, who was found lying on the rear seat having sustained bleeding injuries and on seeing Yash informed him that applicant along with co accused Akshay, Dhiraj Shinde and Dhiraj Tithe and one co accused referred as Barkya to have assaulted him, and requested them that, he should be immediately taken to hospital and accordingly Yash and his friends took him to hospital where he was declared dead. Similarly Nitin as well as Shekhar Ingavale had implicated applicant, together with co accused.

7. Perusal of panchanama of CCTV footage partially corroborates the version of complainant wherein he has stated that applicant along with above named co accused have taken away Aditya from the house of Prajkta who was thereafter found carried on two wheeler by making him sit in between co accused Dhiraj Shinde and

Akshay More and further CCTV footage reveals involvement of co accused when Shubha, Dhiraj Thithe are found proceeding from Triveni square, in swift desire vehicle which evidence when considered with the statement of Yash, Vishal and Siddharth collectively, prima facie establish applicant's involvement along with co accused in the series of events which started by taking away deceased from the house of Prajkta and then on motor cycle to some secret place and after assault carried him in the car in injured condition to Milkmaid factory where from he was admitted to hospital by his friends Vishal and Siddharth whom he was declared, dead on admission in the hospital.

8. Case of prosecution of assault by co accused Akshay upon deceased is further found substantiated as Prajkta is also assaulted by co accused Akshay by wooden bat on her head which is also used by him for assaulting Aditya which came to be seized at the instance of co accused.

9. Perusal of post mortem report though reveals that cause of

death of deceased is head injury. it is noted that apart from such injury deceased sustained as many as 23 injuries on his person on the various part of the body which goes to establish involvement of more than one person in commission of present crime.

In view of available evidence as discussed above as applicant's involvement is prima facie established, then, there is no substance when it is contended that, since cause of death of deceased is due to head injury which is caused by co accused Akshay More as confessed by him as by itself this evidence is not sufficient to allow the application. Application is therefore, rejected.

(P.N.DESHMUKH, J.)