

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

CRIMINAL BAIL APPLICATION NO.578 OF 2019

Abhijeet @ Japani Krushna Bhosale Applicant

versus

The State of Maharashtra Respondent

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- Ms.Shubhangi Parulekar, Advocate for Applicant.
- Ms.S.S. Kaushik, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 23rd SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.112/18 registered with Hadapsar Police Station, Pune, under sections 302, 212, 120(B), 143, 144, 147, 148, 149 r/w 34 of the Indian Penal Code.
2. The Applicant was arrested on 02/02/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed. The case pertains to murder of one Sujit Verma.

The incident had taken place on 28/01/2018. There were in all 12 accused. The present Applicant is shown as accused No.1 in the charge-sheet.

3. The FIR is lodged by PSI Umakant Vaijnath. He has stated that on 28/01/2018 at about 02.15 p.m. an unknown person telephonically informed the police officers of Hadapsar Police Station that one person was assaulted at Gondhale Nagar, Hadapsar. The police staff on the basis of this information went to the spot and found that the deceased was lying in injured condition at that time. There was one two wheeler lying nearby. The first informant and others recognized him as Sujit Verma, as he was on the record of police for commission of various offences. He was removed to Sassoon Hospital, Pune, but he was declared dead before admission. The investigation was carried out and the Applicant was arrested on 02/02/2018.

4. The investigation shows that there were two eyewitnesses to the incident namely Vinod Pandurang

Nimbolkar and Balaji Tipanna Bansode. The charge-sheet contains statement of one Rohit Jagtap to establish that there was conspiracy to commit murder of the deceased. Against the present Applicant, there was a Panchanama under which his clothes were recovered.

5. Heard learned Counsel Ms.Shubhangi Parulekar for the Applicant and learned APP Ms.S.S. Kaushik for the State.
6. Learned Counsel for the Applicant submitted that the eyewitnesses have not named the Applicant. They have not even identified the Applicant. No test identification parade was held to enable the eyewitnesses to identify the assailants. There was no recovery of incriminating articles at the instance of present Applicant. No weapons were recovered at his instance. Though, the clothes of the Applicant were seized, they do not show blood stains at least in the Panchanama. She finally submitted that evidence in respect of conspiracy in the form of statement of Rohit Jagtap also does not show that the Applicant had taken any part in the conspiracy.

7. Learned APP opposed this application and submitted that the incident had occurred because the Applicant was assaulted by the deceased and the Applicant had sought protection from his friends and his organization. Therefore he cannot contend that he is not connected with the offence.

8. I have considered these submissions. Post-mortem notes show that the deceased had suffered 52 incised and chopped wounds all over his body. They were caused by sharp weapons. In that context; statements of eyewitnesses assume importance. The eyewitness Vinod Nimbolkar has stated that the deceased was assaulted by 4 to 5 persons. He was not made to identify the assailants. No test identification parade was held. The other eyewitness Balaji Bansode has named two accused i.e. Akshay Suryavanshi and Prithviraj Suryavanshi as two of the persons who were assaulting the deceased. He has stated that apart from them, there were 3 to 4 others who were assaulting the deceased with sickles. Even he was not made to identify the

accused or any other suspects during test identification parade.

No test identification parade was held.

9. There are statements of API Prasad Lonare, API Rahul Ghuge and PSI Manik Doke. These statements show that the CCTV footage at the spot of incident was examined and these police officers have specifically named accused Kiran Gundewad, Akshay Suryavanshi, Akshay Hake, Pravin Sutar and Prithviraj Suryavanshi as the actual assailants, who were assaulting the deceased. Significantly in none of these statements, the name of the Applicant is mentioned as one of the assailants. The incident is recorded on CCTV footage. Thus, even as per the prosecution case, the Applicant was not one of the assailants. Therefore, the only significant evidence against him, is the statement of one Rohit Vilas Jagtap, which was recorded on 03/02/2018 i.e. after the arrest of the Applicant. He has stated in his statement that on 27/01/2018, he was suggested by one Nishant Bhagat that they should go to Gondhale Nagar, because the Applicant was assaulted by the deceased. The deceased was planning to assault the Applicant again. This witness Rohit Jagtap went to Gondhale

Nagar near branch of Hindu Rashtra Sena. He saw accused Akshay Suryavanshi, Kiran Gundewad, Takkyash Lashkare, Nitin Zamba and 15 to 20 others. The Applicant was also amongst them. At that time, the Applicant had told everybody that he was assaulted by the deceased and he along with others were planning to come there to assault the Applicant again. He requested those accused to wait there. For quite a while, the deceased or his associates did not go there. Accused Akshay Suryawanshi went at some distance and made a phone call. He came back to all those who were present there and told them that Anna Devkar, Sonya Dangmali, Prem Sutar, Shubham Kamthe and Akash Kakade had instructed that Sujit Verma should be murdered in broad day light in crowded locality because the people should be scared of Hindu Rashtra Sena. Akshay Suryavanshi then suggested that they should contribute to purchase weapons. After this, these witnesses had left the spot. The prosecution is relying on this statement to show that there was a conspiracy to commit murder of the deceased and the Applicant was a part of the conspiracy.

10. The role attributed to the Applicant was that he had told others that he was assaulted by the deceased. Significantly he had not suggested that his friends should retaliate or take revenge. Rohit Jagtap's statement clearly shows that Anna and four others specifically told Akshay Suryavanshi to commit murder of the deceased, so that people were under fear of their organization in the locality. Thereafter there is nothing to show that the Applicant had taken any part in execution of such conspiracy. In this view of the matter, considering the evidence in the charge-sheet, since there is nothing to show that the Applicant had played any part after the conspiracy was hatched, at this stage, sufficient doubt is created in respect of his involvement and therefore he deserves to be released on bail, during the pendency of the trial. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.112/18 registered

with Hadapsar Police Station, Pune, on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend concerned Police Station once every month till the conclusion of the trial.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)