

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

BAIL APPLICATION NO.617 OF 2019

Vikas @ Nana Kisan Malgunde	..	Applicant
Vs.		
State of Maharashtra	..	Respondent

Mr.Rahul K. Dhaygude for the applicant.
Ms.S.S.Kaushik, APP for the respondent-State.

CORAM : P.N. DESHMUKH, J.
DATE : 1st April 2019

P.C.:

. Heard learned counsel for applicant and learned APP.
Perused case diary. Perused copy of charge-sheet.

2. Learned counsel for applicant by referring to the complaint and supplementary statement of complainant submitted that only role attributed to applicant is of assault by kick blows and fist blows in his report and is silent in his supplementary statement dated 30th June 2018 of assault by applicant by kick blows and fist blows.

3. Learned counsel by referring to statement of two eye-witnesses had further pointed out role of applicant as stated by complainant of assault by kick blows and fist blows and in fact from

statement of Mahesh Shirsat, applicant was only stated to be present at the spot at the time of incident. In view of limited evidence available against applicant, it is submitted that there is nothing to bring on record if applicant is author of any of grievous injuries sustained by deceased on the vital part of his body on his head which injuries, according to Post Mortem report, are certified to be the cause of death of deceased. In the background of above available evidence, it is submitted that applicant be released on bail who is 24 years old and from report, it is also pointed out that in fact deceased Akshay was history-sheeter and at the time of incident was on bail in some crimes. It is thus prayed that application be allowed.

4. Learned APP opposed the application by referring to supplementary statement of complainant establishing applicant's involvement by assault of kick blows and fist blows. Learned APP, on instructions, makes a statement that except for such involvement, there are no other witnesses who speak of assault by applicant on deceased except for statement of Deepak Dharme who attributes assault by applicant on deceased by wooden rod and has thus contended that considering injuries sustained by deceased and since applicant is named by eye-witness though there is no specific evidence involving applicant as

author of any particular injuries as he has actively participated in assault does not entitle him to be released on bail and has prayed that application be rejected.

5. Perusal of report would reveal that incident took place at night of 29th June 2018. Report is lodged by father of deceased stating that at the time of incident, deceased was caught hold by Nana @ Houserao Devkate who made him to fall on the ground, when said accused was accompanied with Avinash @Pappu Devkate armed with wooden rod, Dattu Gophane armed with iron pipe, Satyavan @ Baglya also armed with iron pipe and were assaulting Akshay. At that time, another accused Aba Dhale was assaulting by wooden rod while applicant along with co-accused Yogesh Gophane, Praving Gophane and 2-3 unknown persons assaulted by kick blows and fist blows. As such in FIR, applicant's involvement is only as aforesaid, in supplementary statement of complainant, he is silent about any role of applicant in the present crime and in second supplementary statement had struck up his story of assault by kick blows and fist blows. In that view of matter, complainant from his statements involved applicant only by assault of kick blows and fist blows.

6. Statement of eye-witness Sanjay Raut and Savta Jamdade are also similar involving applicant in assault of kick blows and fist blows while one more eye-witness Mahesh Shirsat attributes mere presence of applicant at the time of incident.

7. Thus, from statement of complainant and above stated witnesses, role attributed to applicant is limited that by assault of kick blows and fist blows. Statement of Deepak Dharme which is relied upon by learned APP though attributes assault by applicant by wooden rod, it is material to note that his statement does not specify any part of body upon which assault is committed. This aspect finds to be significant. In view of Post Mortem notes wherein deceased is stated to have sustained multiple fracture injuries of skull bones including frontal temporal, frontal occipital and maxillary bones in the manner of crush injuries. Cause of death is stated to be fracture to skull.

8. Considering injuries sustained by deceased, none of them can be possible by kick blows or fist blows. If fracture of skull is possible by assault of wooden rod on head, statement of eye-witness Deepak Dharme is silent with regard to part of body upon which applicant has caused assault. Having considering above stated available evidence

against applicant and since investigation is complete, applicant's application is liable to be allowed as deceased himself was also criminal elements and according to report, accused Houserao Devkate had lodged report against deceased with Baramati Police Station on which he was arrested and released on bail. For the reasons as aforesaid, application is allowed by imposing conditions as per order below :-

ORDER

- (i) Applicant in C.R. No.309 of 2018 registered with Baramati City Police Station for offences punishable under Sections 302, 143, 147, 148, 149 of IPC shall be released on bail on his executing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount;
- (ii) While on bail, applicant shall mark his presence with Baramati City Police Station on the first day of each month initially for period of 6 months and thereafter quarterly on the first day of each such month pending trial.
- (iii) Applicant shall attend trial Court on the fixed dates without fail and shall not tamper with witnesses ;
- (iv) Learned Trial Court shall not get influenced with the observations made hereinabove and shall evaluate evidence independently at the time of trial.
- (v) Application is disposed of in above terms.

P.N. DESHMUKH, J.