

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

CRIMINAL BAIL APPLICATION NO. 518 OF 2018

Rushikesh Ramdas Patil	... Applicant
Vs.	
The State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO. 298 OF 2018
IN
CRIMINAL BAIL APPLICATION NO. 518 OF 2018**

Abhijit Pradip Khandagale	... Intervenor.
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In the matter between

Rushikesh Ramdas Patil	... Applicant
Vs.	
The State of Maharashtra	... Respondent

...

Mr. M.S. Mohite a/w Mr. Akshay Goswami & Mr. Hemal Patel I/by
G.M.S. Legal for the applicant.
Mr. Aniket Nikam I/by Mr. Aashish Stapute for the intervenor.
Mr. S.R. Agarkar, APP for the Respondent-State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 4th FEBRUARY, 2019.**

P.C.

1. This is an application for bail under Section 439 of Code of Criminal Procedure in connection with CR No. I-475 of 2016 registered with Narpoli Police Station for the offence punishable

under Sections 302, 307, 143, 147, 148, 149, 120(B), 201 of Indian Penal Code alongwith Sections 3(1)(ii), 3(2) & 3(4) of Maharashtra Control of Organized Crime Act, 1999 alongwith Sections 37(1) and 135 of Maharashtra Police Act. First Information Report was lodged on 24th October, 2016.

2. The case of the prosecution is that on 24th October, 2016, the complainant was informed that deceased Bunti Khandagale is assaulted by knife and he was lying in front of Shankar Temple and hence he rushed at the said place. Injured was not found at the said place and hence he rushed to the hospital. He found that injured had sustained injuries on his head, fore-head, right arm, elbow, abdomen and chest. Injured was the brother of the complainant. On inquiries the injured disclosed that he was assaulted by Akshay N. Patil and Bharat and they have also snatched the gold chain and gold ring. First Information Report was lodged on the same day.

3. During the course of investigation it was revealed that Akshay Patil is head of gang. He has created terror in the village. Several cases are registered against him. He has several

associates. Statement of several witnesses were recorded. It is the case of prosecution that there was enmity between the complainant's family and applicant, as deceased had defeated the father of the applicant in election. During the course of investigation, statement of eye witnesses were recorded. In the said statement they disclosed that the applicant was present at the scene of offence and was instigating the assailants to liquidate the deceased. The provisions of MCOC were applied. After investigation, chargesheet was filed. Applicant was arrested on 9th January, 2017.

4. Learned counsel for the applicant submitted that applicant has been falsely implicated in this case. Applicant's involvement is not disclosed in the first information report. Injured has referred the names of two persons as assailants. It is further submitted that injured was taken to the hospital wherein aforesaid disclosure was made which is being treated as dying declaration. It is submitted that eye witnesses were also present at the hospital and they did not disclose the involvement of the applicant immediately to the complainant before registration of FIR which itself indicates that applicant has been falsely implicated in this case. It is further

submitted that presence of the applicant was disclosed on the statements which were recorded after registration of the First Information Report. Prosecution has relied upon the motive of political enmity to show the involvement of the applicant. However, there is every possibility that the applicant has been falsely implicated in this case on account of enmity. Confessional statement of the accused recorded during the course of investigation does not show that the applicant was present at any point of time while hatching conspiracy. The applicant is in custody from the date of arrest and only role which has been attributed to him is to instigate the assailants.

5. Learned APP and learned counsel for the intervenor submits that there is sufficient evidence against the applicant. There are eye witnesses to the incident to show the participation of the applicant in the crime. Supplementary statement of the complainant was recorded which shows the involvement of the applicant as one of the participant in the crime. Statement of the witnesses were also recorded under Section 164 of Code of Criminal Procedure which also shows the complicity of the applicant in the crime. It is further submitted that the applicant

has antecedents and the said crime was committed with the gang leader who had participated in assaulting the deceased in the present case. It is therefore submitted that there is sufficient evidence against the applicant and he is not entitled for bail.

6. I have perused the chargesheet. Prosecution case is that there was enmity between the applicant and the complainant's family. The enmity is spelt out in the statement recorded during the investigation. Prosecution is relying upon the statement of eye witnesses recorded under Sections 161 and 164 of Code of Criminal Procedure. As noted above, the contention of the applicant is that he has been falsely implicated in this case, as his name is not appearing in the first information report and his involvement is not disclosed immediately. However, on perusal of the statement of the witnesses as well as supplementary statement of the complainant it is apparent that the applicant was present at the scene of offence and was instigating the assailants to liquidate the deceased. Supplementary statement also discloses the involvement of the applicant. The confessional statement was also recorded under Section 18 of MCOCA Act refers to the conspiracy being hatched by the accused which was followed by the incident

of murder. At this stage, *prima-facie* involvement of the applicant is disclosed.

7. Considering the nature of offence, and evidence no case for grant of bail is made out and hence application stands rejected. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application No. 518 of 2018 is rejected.
- ii. Criminal Application No. 298 of 2018 stands disposed off.

(PRAKASH D. NAIK, J.)