

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.507 OF 2019

Kaluram Balu Pimple] ... Applicant

Versus

The State of Maharashtra] ... Respondent

WITH

CRIMINAL APPLICATION NO.340 OF 2019

IN

CRIMINAL BAIL APPLICATION NO.507 OF 2019

Somnath Balu Korde] ...Intervener/
Applicant

IN THE MATTER OF

Kaluram Balu Pimple] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Sudeep Pasbola a/w Mr. Karl Rustomkhan, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent.

Mr. Satyavrat Joshi, Advocate for the Intervener in Cri. Appln. No.340/2019.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 18 JUNE, 2019.

P. C. :-

1. The applicant is seeking bail in connection with C.R.

No.112/2018 registered with Kamshet Police Station, Pune u/sec.302, 143, 147, 148, 149 of I.P.C. and under Section 4, 25 of the Indian Arms Act.

2. The FIR in this case is lodged on 02/09/2018 by the brother of the deceased who had also witnessed the assault on the deceased. He has stated in his FIR that because of previous dispute the applicant was having grudge against the deceased. On 02/09/2018 at about 3.15 a.m. the informant received a telephonic call from his cousin Amol. He was informed by Amol that the deceased was being assaulted by the present applicant and 3 to 4 other persons. All these assailants were named by Amol. The first informant rushed to the spot where the assault was taking place and it is his case that he saw Nitin Dnyanadev Kedari, Nitin Arjun Kedari, Balu Mandekar, Baban Kedari, Umesh Kedari and the present applicant were assaulting his brother Kiran with sickles. When the informant and others reached near Kiran, the assailants ran away from the spot. The first informant and other removed Kiran to hospital where he was declared dead before admission.

3. Heard Mr. Sudeep Pasbola Ld. Counsel for the Applicant, Mr.Prashant Jadhav, Ld. APP for the State/Respondent and Mr.Satyavrat Joshi, Ld. Counsel for the Intervener.

4. Ld. Counsel for the applicant submitted that there are three eye witnesses mentioned in the charge-sheet. According to him, all of them have given different versions of the same incident. He submitted that though the first informant has claimed that he had witnessed the incident where the deceased was assaulted by all the assailants including the present applicant, his version is not consistent with other witnesses. Amol Korde who had called the first informant himself has not attributed any specific assault with sickle to the present applicant. His statement recorded u/sec. 161 of Cr. P.C. mentions that the present applicant was instigating others. But there is no reference to his own assault on the deceased. Mr. Pasbola, invited my attention to the statement given by another eye witness Kanifnath Korde. In this statement also the same role of instigation was attributed to the present applicant. He therefore submits that this statement though indicates that the applicant could be present on the spot but he did not taken any active part in the assault. Mr. Pasbola

referred to the statements of Amol Korde and Kanifnath Korde recorded u/sec.164 of Cr. P.C. In the statement given by Amol u/sec. 164 of Cr. P.C., besides the role of instigation, he also attributed the role of holding legs of the deceased when the assault was going on. Whereas the statement of Kanifnath recorded u/sec. 164 of Cr. P.C. shows that the applicant assaulted the deceased with sickle on his throat. Thus, serious role is described by Kanifnath Korde against the present applicant.

5. Mr. Pasbola further submitted that applicant is arrested on the very same day i.e. on 02/09/2018 and there is no incriminating material against him in the nature of recovery of either weapon or of any other incriminating article. He submitted that even the clothes of the applicant do not show any blood stains. He therefore submitted that considering the contrary versions of the eye witnesses recorded at different times, no case is even prima facie made out against the present applicant. In fact, the statements indicate that the present applicant is implicated falsely.

6. I have considered the submissions of Ld. Counsel for the

applicant. The statement of the first informant is very specific and he has attributed the role of assault with sickle to this applicant. The statement of Kanifnath recorded u/sec. 164 of Cr. P.C., which is more important than the statement recorded u/sec. 161 of Cr. P.C., clearly makes out a case that the applicant had assaulted the deceased with sickle on throat. The postmortem report shows more than 12 injuries and most of them were chopped wounds. The deceased was brutally assaulted. There are eye witnesses to the incident. At this stage, there is sufficient material against the present applicant, therefore no case for bail is made out. Hence, the following order.

ORDER

1. Application is rejected and stands disposed of accordingly.
2. Consequently, Criminal Application No.340/2019 also stands disposed of.

(SARANG V. KOTWAL, J.)