

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 745 OF 2019**

Chotelal Lalbacchan Sahani	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Abdul Hafeez I/b Mr. Khan Abdul Wahab for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 10th JULY 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 326 of 2017 registered with the Kherwadi Police Station, Bandra, Mumbai, for the alleged offence punishable under Section 302 r/w 34 of the Indian Penal Code.

3 Learned counsel for the applicant submitted that the applicant had no motive to assault deceased-Sudhir. He submitted that taking the

prosecution case as it stands, it appears that the incident took place on the spur of the moment, when the applicant went to save his landlord, co-accused-Anant Shinde and his wife, as deceased-Sudhir had attacked them and that pursuant thereto, the applicant assaulted the deceased with a hammer. He submitted that the applicant has no antecedents. He further submitted that there are discrepancies in the statement of the complainant-Sunita Pawar and the eye-witness-Suchita Rege.

4 Learned A.P.P opposed the application. He, however, does not dispute the fact that the applicant has no antecedents.

5 Perused the papers. According to the complainant-Sunita Pawar, the incident took place on 7th November 2017. She has alleged that the applicant and her husband had gone out for some work and that Sudhir (deceased) returned home alone, at around 10:30 p.m. She has stated that Sudhir was under the influence of alcohol. She has further stated that the house of her relatives is situated opposite her house and that the tenant of Anant Shinde i.e. the applicant was standing in front of his room and the relatives were sitting on the staircase. She has further stated that Sudhir

made certain inquiry with regard to the work assigned to the applicant, pursuant to which, the applicant told Sudhir that his work could not be done. She has stated that Sudhir started abusing the applicant and threw a bamboo stick at him, pursuant to which, the applicant assaulted Sudhir with a bamboo stick (which was thrown at him by Sudhir), on his head. She has further stated that Sudhir picked up a hammer to assault Anant Shinde, however, the applicant snatched the said hammer and assaulted Sudhir with the hammer on his forehead. According to the complainant, the other person who was present, also assaulted Sudhir with a hockey stick and the applicant is also alleged to have thereafter, given fist blows.

6 A perusal of the statement of Suchita Rege (eye-witness) shows that Sudhir was under the influence of alcohol and that he threw a wooden stick, where co-accused-Anant Shinde was sitting. The said stick is stated to have hit the balcony. She has further stated that co-accused-Anant Shinde and his wife came home and started abusing Sudhir and that co-accused-Anant Shinde picked up a wooden stick and assaulted Sudhir. She has further stated that co-accused-Anant Shinde pushed Sudhir, as a result of which, he fell on the ground, when the applicant and Rakesh (tenants of

co-accused- Anant Shinde) came running. She has alleged that the applicant picked up a wooden stick and Rakesh armed with a hockey stick assaulted Sudhir. The said witness has not mentioned about assault by hammer on the deceased by the applicant. A perusal of the said statement shows that motive has been attributed to co-accused-Anant Shinde. The facts *prima facie* reveal that the incident took place on the spur of the moment. The applicant has no antecedents. The investigation is complete and charge-sheet is filed.

7 Considering the aforesaid, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;

(iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is accordingly disposed of.

9 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.