

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

CRIMINAL BAIL APPLICATION NO.846 of 2019

Baban Vitthal Kedari

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Ms. Anjali Patil, Advocate for the Applicant.

Mr. H.J. Dedhia, APP for the state-respondent.

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CORAM : PRAKASH D. NAIK, J.

DATE : 20th November, 2019

PC :

1. The applicant is seeking Bail in connection with C.R. No. 112 of 2018 registered with Kamshet Police Station, District Pune, for offences punishable under Sections 302, 143, 147, 148 and 149 of Indian Penal Code and Sections 4 & 25 of Arms Act.

2. The FIR was lodged by Somnath Balu Korde who is the brother of the deceased Kiran Korde. It is stated by the complainant that at about 3.15 a.m. he received a call from Amol Korde who informed him that the accused Nitya Kedari, Nitin Arjun Kedari, Balu Mandekar, Umesh Kedari and Kalu Pimpale are assaulting his brother Kiran Korde. The complainant and his cousin Kanifnath Korde went to the place of incident. He saw Nitin Dnyandeo Kedari, Balu Shankar Mandekar, Nitin Arjun Kedari, Baban Vitthal Kedari

(applicant), Umesh Kedari and Kalu Pimpale assaulting Kiran by sickle. Kiran was shouting for help. Nitin Kedari was abusing Kiran and instigated others not to finish him. The accused continued to assault him. After interrogation of complainant the accused ran away. The FIR was registered on the basis of his statement. Subsequently, supplementary statement of the complainant was recorded on 4th September, 2018. After completing the investigation, charge-sheet is filed.

3. Learned counsel for the applicant submitted that on account of enmity the applicant has been falsely implicated in this case. There are contradictions in the version of the witnesses. It is submitted that the case of the prosecution is that the complainant and Kanifnath Korde came together. However, there version is contradictory. Amol Korde has stated in his statement that the applicant and other persons were instigating the co-accused to assault Kiran Korde. The role of assault by using weapon is not attributed by Amol Korde. It is further submitted that Kanifnath Korde had stated that the applicant was instigating the other accused to assault the deceased. Learned counsel also pointed out that the statement of Swati Kedari recorded on 2nd September 2018. She has stated that the injured was found in the Verandah of her house and the eye witnesses came at the said spot, subsequently the witnesses had no occasion to see the assault.

Learned counsel for the applicant further submitted that the recovery of weapon is at the instance of other accused. Considering the major contradictions in the statements of the witnesses, doubt is created with regards applicants' involvement.

4. Learned APP submitted that the statement of the complainant has to be accepted. He has clearly stated that the applicant was the person who had assaulted the deceased by weapon. It is further submitted that the statement of eye witness Amol Korde was recorded under Section 164 of Cr.P.C. In the said statement he has stated that the applicant caught hold of legs of the deceased and other person had assaulted. He also pointed out that the statement of Kanifnath Korde mentions that the applicant had taken the sickle from the hand of the other accused and he had assaulted the deceased Kiran by using sickle. Learned APP submits that the statement of Kanifnath supports the version of the complainant. Learned APP also submits that the Bail application preferred by Kaluram Pimple has been rejected by this Court vide order dated 18th June, 2018. Learned counsel for the applicant however submits that the case of Kaluram Pimpale can be distinguished. In the statement under Section 164 of Cr.P.C. both witnesses have attributed him role of assaulting by weapon.

5. I have perused the charge-sheet. It is apparent that the

presence of the applicant has been established by all the witnesses. According to the complainant, the applicant was armed with weapon and he has assaulted the victim by using sickle. Indeed Amol Korde statements recorded under Section 161 of Cr.P.C. has stated that the applicant Umesh Kedari and Kalu Pimpale were instigating co-accused that Kiran should be finished. The version of the complainant which was in first point of time indicates that the applicant had assaulted the deceased by using weapon. The contradiction as pointed by learned counsel for the applicant will have to be appreciated at the time of Trial. In the statements of Kanifnath Korde recorded under Section 161 of Cr.P.C. it is stated that Kiran was assaulted by some of the accused and applicant and Kalu Pimple were instigating by saying that Kiran should be finished. In the statement under Section 164, it is stated that applicant and others were assaulting Kiran. Applicant took sickle from Balu Mandekar and assaulted on face of Kiran. Amol Korde in his statement under Section 164 of Cr.P.C. has stated that, applicant was instigating other accused while rejecting application of Kaluram Pimpale. This court had considered similar aspects. The statements of first informant is specific and he has stated the role of applicant. The deceased had sustained several injuries, most of them were chopped wounds. It is a brutal murder. Contradictions in version of

witnesses will have to be considered during trial. Hence, No case for grant of Bail is made out.

ORDER

Bail Application No.846 of 2019 is rejected.

(PRAKASH D. NAIK, J.)