

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.859 OF 2019

Rahul Vasant Nandan] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Piyush Toshnival i/b Mr. Vivek Arote, Advocate for the Applicant.
Smt. A.A. Takalkar, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 27th AUGUST, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.07/2017 registered with Surgana Police Station, District Nashik u/sec. 302, 201 r/w 34 of I.P.C.

2. The applicant was arrested on 16/02/2018 and since then he is in custody. The investigation is over. The charge-sheet was filed on 10/10/2017 and thereafter the supplementary charge-sheet was filed against the present applicant on 17/04/2018. The offence was registered u/sec. 302, 201 r/w 34 of I.P.C. The FIR is lodged by one Nanda Mangesh Patil in respect of murder of her husband. She has

mentioned that, she and her husband were selling articles for performing pooja at Vaniganga Ghat, Ramkund, Nashik. On 02/02/2017, the deceased closed his shop and went with one Dhiraj on his motorcycle. He did not return till 9.00 p.m. At around 10.00 p.m., she was informed by a relative that, the deceased had met with an accident and was admitted in Primary Health Centre at Surgana. The informant and others went there at around 11.30 p.m. The deceased was admitted by then. She has mentioned in her FIR that, about six months prior to the incident, the informant had quarrel with one Pratiksha Dive in respect of their shop from where they were selling their articles for pooja. Pratiksha's husband Jayesh had threatened to commit murder of the deceased, informant and their children and she suspected that Jayesh was behind the murder of the deceased. The prosecution story is that, the Jayesh along with others including the present applicant took the deceased forcibly in Tavera vehicle in Karvande village and thereafter he was assaulted with baseball bat and an iron rod. Thus, they committed murder of the deceased. The dead body was thrown near Umbarpada village.

4. Heard Mr. Piyush Toshnival, Ld. Counsel for the Applicant and Smt. A.A. Takalkar, Ld. APP for the State/Respondent.

5. Mr. Toshnival submitted that, there is absolutely no material against the present applicant. The Ld. Trial Judge has rejected his bail application based on the confessional statement of one Vicky Thakur. Otherwise there is absolutely no material against the present applicant.

6. Ld. APP opposed the bail application, but she could not point out any material from the charge-sheet which was incriminating material against the present applicant.

7. I have considered these submissions. The postmortem notes shows that, the deceased had suffered more than 10 injuries all over his body. The question remains as to whether the present applicant in any manner is connected with the present FIR. In the charge-sheet as mentioned earlier, there is statement of Vicky Thakur which was recorded purportedly based on the provisions of Section 27 of the Indian Evidence Act. In that statement that, co-accused Vicky had shown willingness to show the place where the weapons were thrown.

Similarly he was showing willingness to show the place from where the beer bottles were purchased. Pursuant to his statement, panchanama was carried out and all these articles were recovered. In that statement there is a reference of the present applicant that, he along with other accused had committed murder of the deceased. Obviously that portion of the statement of the co-accused is inadmissible because such confessional part has not led to discovery of any fact, therefore that portion is inadmissible and cannot be referred to for any purpose. Besides, this there is no iota of evidence against the present applicant. In this view of the matter, the applicant deserves to be released on bail. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.07/2017 registered with Surgana Police Station, District Nashik, on his furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)