

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

CRIMINAL BAIL APPLICATION NO. 918 OF 2019

Rajesh Haumant Londhe	...Applicant
Vs.	
State of Maharashtra	...Respondent

- Mr. Priyal G. Sarda, Advocate for the Applicant.
- Mr. Prashant Jadhav, APP for the State.
- Mr. P. M. Chaudhari, API, Lonikalbhor Police Station, Pune Rural.

CORAM : SARANG V. KOTWAL, J.
DATE : 16th SEPTEMBER, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with CR No. 408/16 registered at Loni Kalbhor Police Station, Pune for offences under Section 302 read with Section 34 of the IPC.
2. The FIR in this case is lodged by one Atul Kotwal, who was brother of the deceased Amol Kotwal. The FIR was lodged on 22nd May 2016. He has stated in his FIR that in the year 2014, the informant had put on advertising board congratulating the local MLA. The present applicant and other accused had torn that hoarding. The informant had questioned them and therefore, there

was a dispute between them. The informant was assaulted by the applicant and his companion, for which the separate FIR was registered. The accused including the present applicant were on bail in that case. From that day onwards there was serious enmity.

3. On 20th May 2016, the informant and the applicant had scuffled with each other and at that time, the applicant had threatened to commit his murder. On 21st May 2016, informant's brother Amol had gone to attend his job. He was to return at around 11.30 p.m. However, he did not return, instead his dead body was found on the road between Indira Nagar to old Tambe vasti. He had suffered serious injuries. On this basis, the informant was convinced that the applicant and his companions has committed murder of his brother Amol and FIR was lodged.

4. The postmortem notes show that there were as many as 29 injuries all over the body. They were in the nature of stab injuries, chop injuries, abrasions, etc. The cause of death was mentioned as 'Death due to multiple injuries'. The deceased was brutally assaulted. The investigation was carried out. The applicant was arrested on 31st May 2016 and since then he is in custody. The

charge-sheet was filed. The charge-sheet mentions that the deceased was assaulted by the applicant, Swagat Khaire, Mahadeo Adlinge and Akshay Rede with weapons like sickles, iron pipe etc.

5. Heard, Mr. Priyal Sarda, learned counsel for the applicant as well as Mr. Prashant Jadhav, learned APP for the State.

6. With their assistance, I have gone through the charge-sheet annexed to the memo of the application.

7. Mr. Sarda submitted that except the present applicant all other accused are released on bail. Mr. Sarda, in particular claims parity with the accused Mahadeo Adlinge, whose role and nature of evidence against him according to Mr. Sarda, are similar to those of the applicant. He submitted that the FIR was lodged merely on suspicion. There was no direct enmity between the applicant and deceased. The dispute was with the informant. He submitted that the statement of one Amir Tamboli could not be taken into account because his statement was recorded under Section 164 of the Cr. P. C. on two occasions and on the first occasion, he had not named the present applicant. He submitted that the same Amir Tamboli was subsequently removed from the

list of accused and therefore, his statement recorded afterwards shows that it was given under coercion or at the instance of investigating agency. He submitted that the only evidence against the present applicant separating his case from others is recovery of weapons which can hardly be termed as being of sterling quality resulting in possible conviction of the applicant. He further submitted that the applicant is arrested in May 2016. The charge-sheet is already filed. No purpose will be served by keeping him in custody during the entire period of trial.

8. Learned APP opposed these submissions and added that there is sufficient material against the present applicant. His role is established and though the enmity was with the informant as well, the applicant was entertaining strong suspicion that the deceased was the force behind the informant's defiant attitude towards the applicant and therefore, this offence was committed by the applicant.

9. I have considered all these submissions. As pointed out by Mr. Sarda, there is evidence of recovery of weapons at the instance of the applicant. This recovery was effected at his instance from

the bushes. The weapons were concealed in a gunny bag and there were two sickles and one iron pipe. There was also chilly powder in that gunny bag. The injuries in the postmortem were possible prima facie with the weapons recovered at his instance.

10. Apart from this incriminating circumstance, there is another important circumstance in the form of statement given by one Amir Tamboli. It was recorded on 17th October 2016 under Section 164 of the Cr. P. C. He has stated in that statement that on 21st May 2016, at around 5.45 p.m. the applicant had called him telephonically and had asked him whether he had any weapon. The said witness Amir Tamboli had cut the telephone call and had told the applicant that he did not have any weapon with him. At around 8.00 p.m., on that day, the applicant and other accused Mahadeo Adlinge, Swagat Khaire came to this witness. They were followed by another accused Akshay Rede. At that time, this witness had confronted the applicant about the telephone call. At that point, the applicant told him that they were going to commit murder of Amol Kotwal. This witness had asked the applicant as to why they were planning to commit his murder when the quarrel

was with the informant. He tried to persuade the accused to drop their plan. However, they left the spot. His statement shows that within a short time, the accused committed murder of the deceased. Therefore, this is a strong incriminating circumstance. Though Mr. Sarda has submitted that this witness had given a statement on 13th June 2016 under Section 164 of the Cr. P. C. and that time he had not made any reference to the events which he had narrated in his second statement. His statement dated 17th October 2016, at this stage, cannot be ignored. It was recorded by JMFC, 22nd Court, Pune. This statement is corroborated by panchanama dated 28th May 2016, whereby the witness Amir Tamboli's telephone was examined, which contained audio recording of his conversation with the applicant. This conversation supports Amir Tamboli's case. Besides this, Amir Tamboli's father's statement recorded on 28th May 2016 also shows that on 21st May 2016 at around 9.30 p.m. Amir had told them that the applicant and others were planning to commit murder of the deceased. Thus, the version of the witness Amir Tamboli is supported by other evidence. Therefore, at this stage, there is strong material

against the present applicant. Though the other accused including Mahadeo Aadlinge are released on bail, the nature of evidence against the present applicant is materially different and therefore, I am not inclined to grant bail to the present applicant. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)