

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

CRIMINAL BAIL APPLICATION NO.920 OF 2019

Mangesh Dnyaneshwar Koditkar Applicant

versus

The State of Maharashtra Respondent

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- Mr.Aniket U. Nikam, Advocate for Applicant.
- Ms.A.A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th AUGUST, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.253/17 registered with Haveli Police Station, Pune, under sections 302, 307, 201, 120(B), 109, 212, 143, 147, 148, 149 of the Indian Penal Code and under sections 3 and 4 r/w 35 of the Indian Arms Act.

2. The Applicant is arrested on 15/08/2017. The incident had taken place on 13/08/2017 wherein one Swapnil

Jaychandra Deshmukh was murdered by the accused persons. The FIR is lodged on 14/08/2017 by one Vishal Rajendra Shelke, who had seen the incident.

3. In the FIR, Vishal Shelke has stated that he was working as a Supervisor with the deceased Swapnil Deshmukh. The present Applicant was on enmical terms with the deceased. On 13/08/2019 the deceased and the first informant had gone to Sinhagad for trekking. After their trek in the evening, they had gone to a farmhouse where they had placed their order for dinner. They were consuming liquor at the farmhouse. At 07.15 p.m. about 6 to 7 persons came there. The present Applicant was one amongst them. They were carrying deadly weapons like sickle, chopper. One of them assaulted the deceased on his head with his sickle. The others assaulted him brutally with deadly weapons. One of them even fired at the deceased. One amongst them was trying to assault the first informant. He ran away from there, took shelter in one of the rooms and locked it from inside. The CCTV machinery was taken away by those assailants.

After committing murder of the deceased, they left the place. The informant went to the police station and lodged his FIR. The Applicant was named in the FIR. He was immediately arrested on 15/08/2017. The investigation was carried out and the charge-sheet is filed. The charge-sheet contains statement of two eyewitnesses namely Dyaneshwar Shivaji Bhosale and Meena Anil Kumbharkar. Dyaneshwar has given three statements. In his first statement dated 14/08/2017 he has stated that he was working in the same farmhouse where the incident had occurred. He has stated that at the time of incident he had seen 7 to 8 persons out of which he was knowing Dadya Raut, Shekhar Tambe and the present Applicant. He has specifically named them. According to him, all these persons came there with deadly weapons and assaulted the two persons who were sitting at one of the tables and were consuming liquor. Thereafter he ran away from the spot. He has given his supplementary statement on 09/09/2017, after he had attended the test identification parade for identifying the assailants. In that statement, he has stated that he had identified four

assailants. Apart from them he had named Shekhar and Anant as the persons who had assaulted the deceased. However, in this statement he has not mentioned the name of the present Applicant. There is one statement recorded u/s 164 of Cr.P.C. In that statement he has completely omitted the name of the present Applicant. He has stated that he had identified six people from the test identification parade. Dadya Raut and Shekhar Tambe were amongst them, whom he had identified.

4. The statement of third eyewitness Meena Kumbharkar does not take the prosecution case any further. Though she had seen the incident, she was not knowing the assailants and she was not asked to identify the assailants in any test identification parade.

5. Apart from this direct evidence there is a corroborative piece of evidence in the form of recovery of sickle at the instance of the present Applicant. The recovery was effected at his instance on 26/08/2017. Weapon was recovered which was concealed near a tree.

6. Heard learned Counsel Mr.Aniket U. Nikam for the Applicant and learned APP Ms.A.A. Takalkar for the State.
7. Mr.Nikam submitted that the statement of third eyewitness Meena Kumbharkar is inconsequential and it is not an evidence to show presence of the present Applicant. He submitted that the statement of other eyewitness Dyaneshwar Bhosale is equally vague so far as the present Applicant is concerned and in fact his subsequent statement shows that the present Applicant was not present at the place where the incident had taken place. He submitted that though Dyaneshwar has named the present Applicant in his first statement dated 14/08/2017, even in that statement he has not attributed any role to the present Applicant. Mr.Nikam submitted that though the first informant has named the present Applicant in his FIR and though he has given the enmity between the deceased and the present Applicant as the reason for commission of murder, he has denied his version completely in his supplementary statement dated 19/08/2017. In his supplementary statement

the informant has stated that in the past the deceased had a quarrel with the present Applicant and one Vitthal Barate and in May 2017, the deceased and Vittal Barate had exchanged angry glances. He has further submitted that because of that quarrel Vittal Barate had planned and executed murder of the deceased. Mr.Nikam therefore submitted that not only the motive is changed but this statement changes the entire basis of the case and shows that the present Applicant is falsely implicated. He further submitted that other co-accused are on bail as on today and therefore on the ground of parity, the present Applicant also deserves to be released on bail.

8. As against these submissions, learned APP Ms.Takalkar submitted that the statement of the first informant is a piece of direct evidence and there is no reason to disbelieve that statement at this stage. She submitted that even Dyaneshwar had at the first instance immediately named the present Applicant. She submitted that the first informant as well as Dyaneshwar have identified the present Applicant in the test

identification parade held on 08/09/2017. She therefore submitted that the Applicant does not deserve to be released on bail.

9. I have considered these submissions. The post-mortem notes show that the deceased had suffered as many as 47 serious injuries. There are even firearm wounds. The deceased was brutally assaulted. Both the eyewitnesses i.e. the first informant Vishal Shelke and Dyaneshwar Bhosale at the very first instance when their statement were recorded have specifically named the present Applicant. There is a statement that all the accused assaulted the deceased with weapons they were carrying. These eyewitnesses have also identified the Applicant in the test identification parade, though it was strictly not necessary as they were knowing him. Similarly, though supplementary statement of the eyewitness Dyaneshwar does not name the present Applicant, the test identification parade at this stage cannot be ignored. The contention that the other assailants are granted bail by the Court of Sessions, does not carry much force,

because, in my view, the prosecution has sufficient material against the present Applicant to show his involvement. In this view of the matter, I am not inclined to grant bail to the present Applicant. The application accordingly is rejected.

(SARANG V. KOTWAL, J.)