

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.927 OF 2019

Dipak Bhagwan Pagar] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Bhushan Deshmukh, Advocate for the Applicant.

Mr. S.S. Pednekar, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 1st AUGUST, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.I-386/2018 registered with Nashik Road Police Station, District Nashik u/sec. 302, 307 of I.P.C., u/sec. 4 r/w 25 of the Indian Arms Act and u/sec. 135 of the Maharashtra Police Act.

2. The FIR is lodged on 22/08/2018 by one Akshay Banaeet. He was friend of deceased Sandeep Marsale. He has stated in his FIR that, the present applicant was suspecting Sandeep of having an affair with the applicant's wife. There was enmity between the deceased and the present applicant. The wife of the present applicant was left

at her parental house by the applicant. On 21/08/2018, the applicant called the deceased to settle their dispute. In the past the applicant had abused parents of the deceased and had told them that unless the deceased mended his ways, he would be murdered. Therefore, the deceased as well as his friends had gone to settle the dispute with the applicant. At about 1.15 p.m., the informant, deceased and their other friends met the applicant for settling the issue. While they were coming back at about 1.45 p.m., the applicant was standing near his motorcycle. The first informant was riding motorcycle of the deceased and the deceased was a pillion rider on that motorcycle. The applicant approached them and assaulted deceased with an axe on his head. The deceased Sandeep fell down. The applicant gave one more blow to the deceased. The applicant also tried to assault the first informant but he escaped and ran away. The deceased succumbed to his injuries on the spot itself and therefore, on this basis the FIR was lodged.

3. The applicant was arrested on 22/08/2018 itself. The investigation was conducted and the charge-sheet was filed. The charge-sheet contains postmortem notes which shows that, the

deceased had suffered five injuries. Four injuries were incised wounds and one was fracture. Two injuries were on the head, one was on the neck and remaining were on the right arm. The cause of death was mentioned as “Cranio Cerebral Damage due to Sharp injuries to Head which are sufficient to cause death in ordinary course of nature individually and collectively”.

4. The charge-sheet contains statement of friends of the deceased and the informant who were eye witnesses. The witnesses namely Deepak Patole, Prashant Gangurdeditya Borade have narrated the same story.

5. Heard Mr. Bhushan Deshmukh, Ld. Counsel for the Applicant and Mr. S.S. Pednekar, Ld. APP for the State/Respondent.

6. Ld. Counsel for the applicant submitted that, the statement of eye witnesses are stereo type statements and in fact they show that each of these eye witnesses were riding the same motorcycle. He submitted that, this is impossible and therefore, their statements are not reliable. He further submitted that, the applicant is falsely

implicated and therefore applicant need not be detained in the custody during entire period of trial.

7. These submissions are opposed by the Ld. APP. He submitted that, the offence is serious and there is direct evidence of the eye witnesses. He submitted that, though the statements of the eye witnesses are stereo type and each of them specifically says that he was driving the motorcycle with the deceased. He submitted that, this is appearing because of typing errors.

8. I have considered all these submissions. The statement of the first informant is clear enough. He has attributed specific role to the present applicant. Apart from that, the applicant had tried to assault the first informant as well. At this stage, there is no reason to doubt his version. The statement of other eye witnesses shows lethargic and casual approach on the part of the Investigating Officer in recording their statement. However, the main gist of the statements in respect of the incident is consistent.

9. The statement of the eye witnesses are supported by the

postmortem notes. This shows that, serious injuries were caused by the weapon like axe. Apart from that, there is a panchanama of seizure of weapon dated 22/08/2018. The applicant himself had gone to the police station with his motorcycle and has produced it before the police. He himself had surrendered before police. Therefore, even that circumstance shows that, the applicant had assaulted the deceased. In view of these overwhelming circumstances and direct evidence against the present applicant, no case for bail is made out. Hence, the following order.

ORDER

Application is rejected and stands disposed of accordingly.

(SARANG V. KOTWAL, J.)