

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.954 OF 2019

Mangesh Yashwant Gawas] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Kuldeep Patil i/b Ms. Heena Suvarnakar, Advocate for the Applicant.

Smt. A.A. Takalkar, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 18th SEPTEMBER, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.110/2018 registered with Dodamarg Police Station, District Sindhudurg u/sec.307 of I.P.C.
2. The applicant is arrested on 07/10/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.
3. The FIR is lodged by one Mahesh Aalav who was the victim himself. The informant was working in Anik Depot, BEST as a conductor. The applicant was also a driver in the BEST. They knew

each other since 2009 and they had become friends. The informant used to visit his room frequently. During his visits, the informant got acquainted with applicant's wife and since 2013 they developed their physical relations. The informant used to visit the applicant's house whenever the applicant was not present and used to establish physical relations with the applicant's wife. In the year 2015, the applicant got suspicious about these relations and he had warned the informant not to come to his house. However, subsequently the applicant forgave him. The informant in the meantime again established his relations with the applicant's wife. They again developed physical relations. The informant used to meet applicant's wife in his absence. On 04/10/2018, the informant had taken the applicant's wife to Madgaon. They were received by the applicant, his nephew Sachin and others. The informant stayed with the applicant's family. In the evening, the applicant called the informant in a room and played audio recording between the informant and the applicant's wife. The applicant started asking informant about informant's relations with the applicant's wife. Even the applicant's wife was confronted by the applicant. She was assaulted and she was kept outside the room. The applicant locked the room from inside and started questioning the informant. The

applicant was angry and picked up sickle lying in the room and he tried to give a forceful blow on the informant's neck. The applicant tried to ward off the blow with his right hand and because of the force, it was amputated. The informant started shouting. The other members of the family came there. The applicant himself with the help of others took the informant for treatment to hospital. On this basis, the FIR was lodged.

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

5. Mr. Patil submitted that, the offence would not fall u/sec. 307 of I.P.C. and at the most the allegations would fall u/sec. 308 of I.P.C. He submitted that, it was a case of grave and sudden provocation because of the strong evidence against the informant which the applicant was in possession of. He submitted that, the applicant was in custody for a long period. In addition to the submissions on merits he added that, the applicant's sister is completely blind and requires his care and protection. His mother has undergone surgery for breast cancer. He therefore submitted that, no purpose will be served by keeping the applicant in custody.

6. Ld. APP opposed these submissions and pointed out that, the incident is narrated by the informant himself. There is no reason for him to implicate the applicant falsely. The weapon was lying in the room itself when it was recovered. Therefore, at this stage there is no reason to disbelieve the story of the first informant.

7. I have considered these submissions. With the assistance of Ld. Counsel for both the parties, I have gone through the charge-sheet. I have perused the statement of the wife of the applicant as well. The wife of applicant has also admitted to having love affair with the informant. Therefore, at this stage there is scope to believe that, the applicant had come across the love affair between his wife and the informant and his state of mind at that point of time cannot be said to be unusual. In that state, he tried to assault the informant and then this incident had occurred. Therefore, there is some force in the submissions of Mr. Patil that the offence u/sec. 308 of I.P.C. may be attracted instead of Section 307 of I.P.C. Moreover, the applicant did not try to give further blows to the informant though he had ample opportunity to commit his murder. This fact also goes in favour of the applicant. Though the injury is very serious and the informant has lost

his hand, the circumstances in which the offence had taken place cannot be ignored. In this background, considering all these aspects and also taking into account the physical condition of the applicant's sister and mother, I am inclined to grant bail to the applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.110/2018 registered with Dodamarg Police Station, District Sindhudurg, 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.)