

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

CRIMINAL BAIL APPLICATION NO.1147 OF 2019

Atul @ Ishwar Dashrath Harade Applicant

versus

The State of Maharashtra Respondent

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- Mr.Debajyoti Talukdar, Advocate for Applicant.
- Ms.A.A. Takalkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.120/18 registered with Farshkhana Police Station, Pune, under sections 302 r/w 34 of the Indian Penal Code.
2. The Applicant is arrested on 17/06/2018 and since then he is in custody. The investigation is over and charge-sheet is already filed. The prosecution case pertains to murder of one Tanaji Dhondiram Korke.

3. The FIR is lodged on 16/06/2018 by Police Naik Bhandwalkar. He has stated in his FIR that the police officers received information from one Raju Dattatraya Sonawane that a person was lying injured at Gurudwara, Ganesh Peth, Pune. Police Officers went there and saw that the injured was lying there. The Applicant and his associate Rohan Dnyaneshwar Godse were standing near him. The injured was removed to Sassoon Hospital, Pune, in Rikshaw. But he was declared dead before admission. His identification card revealed his identity and thereafter this FIR was lodged.

4. There are statements of eyewitnesses recorded during the investigation. They are Meena Vinayak Gondhale, Rajeshkumar Lalbahadur Patel, Ashish Haripad Mandal, Rutesh Ajay Pardeshi, Shubham Tanaji Dandnaik. All of them have narrated the same story. According to this eyewitness at around 02.30 p.m., on 16/06/2018, they saw that the Applicant was assaulting his passenger. The Applicant was a Rikshwa driver.

The Applicant was accompanied by his associate Rohan Godse. While the scuffle was going on Rohan gave kicks and fist blows on the face of the deceased. The deceased fell down. Even then, Rohan kicked the deceased on his face. Because of that he suffered bleeding injury and he became unconscious. Within some time police came to the spot. The Applicant and his associates Rohan along with police officer kept the deceased in Rikshaw and then he was taken to Sassoon hospital for further treatment, where he was declared dead. The post-mortem notes show that the deceased had suffered two contused lacerated wounds on his face. The cause of death was mentioned as “Death due to head injury”.

5. Heard learned Counsel Mr.Debajyoti Talukdar for the Applicant and learned APP Ms.A.A. Takalkar for the State.
6. Mr.Talukdar submitted that the offence of murder is not made out from the narration of the eyewitness. There was neither any intention nor knowledge which can be attributed to

the Applicant. The main role is attributed to the Applicant's associate Rohan. He submitted that the Applicant had taken the deceased to the hospital which shows that he did not have any intention to cause death of the deceased.

7. Learned APP pointed out that on a petty issue the deceased was assaulted and he lost his life. She therefore opposed this application.

8. I have considered these submissions and in particular considered the statements of the eyewitnesses. The incident undoubtedly started with fight between the Applicant and the deceased. However, when the Applicant's Rohan joined them, Rohan gave fist blows on the face of the deceased, due to which he fell down. The eyewitnesses have not stated that either the Applicant or Rohan had assaulted the deceased on head. But the deceased had certainly fallen down because of the blow given by Rohan. Even after he had fallen down, Rohan gave him a kick blow. That could have further aggravated the damage suffered

by the deceased. The post-mortem notes show that there was internal haemorrhage. Thus, it is clear that there was no premeditation and intention to commit murder. No weapon was used. But the act of Rohan, in particular, had resulted in death of the deceased. The Applicant was not attributed any particular role by the eyewitnesses of causing injury on his head or face. Hence at this stage, it cannot be said that the Applicant has committed the offence u/s 302 of the Indian Penal Code. However, of course this fact will have to be decided by the trial Court, during trial.

9. Learned APP on instructions states that there are no criminal antecedents against the Applicant. Thus, considering all these circumstances the Applicant can be released on bail. Hence, the following order :

ORDER

- (i) The Applicant is directed to be released on bail in connection with C.R.No.120/18 registered with Farshkhana Police Station, Pune, on his

furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend the concerned Police Station once in a month for a period of one year and shall co-operate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)