

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

CRIMINAL BAIL APPLICATION NO. 1208 OF 2019

Aakash Gulab Gaikwad

...Applicant

Vs.

State of Maharashtra

...Respondent

- Mr. Satyavrat Joshi, Advocate for the Applicants.
- Ms. S. S. Kaushik, APP for the State.

CORAM : SARANG V. KOTWAL, J.

DATE : 9th SEPTEMBER, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with CR No. 816/18 registered at Chakan Police Station, Pune for offences under Sections 302, 143, 147 read with 149 of the IPC. The applicant was arrested on 4th November 2018 and since then he is in custody. The investigation is over and charge-sheet is already filed.

2. The FIR is lodged on 15th September 2018 by one Vyankat Jadhav in respect of murder of his brother Namdeo Jadhav. He has stated in his FIR that Namdeo was a married man, but he was already having love affair since prior to his marriage with one Dipali. Because of that, Namdeo was separated from his wife.

After that there were disputes between Namdeo and Dipali and therefore, Namdeo was not residing with Dipali. It is further mentioned in the FIR that Namdeo had told the informant that he was in love with one Harshada and wanted to marry her. The FIR further mentions that one Akshay Sonawane was harassing Namdeo because he was interested in Harshada. Namdeo had told the informant that Akshay was threatening him. The FIR further mentions that on 14th September 2018, Namdeo had left house to attend his duty in the morning. In the night, at around 10.30 p.m. the informant was told telephonically by police that Namdeo had died. The informant immediately went to Sant Dnyaneshwar Hospital. He saw that Namdeo was wearing a different T-shirt. It was not his T-shirt. There were signs of assault on his body. The informant was told by a co-worker of Namdeo that Namdeo had told him that he was to meet Akshay at Chimbli Phata. Police and the informant saw CCTV footage of Sant Dnyaneshwar hospital and they saw that at round 6.45 p.m., four unknown persons had brought Namdeo on a two wheeler and had admitted him in the hospital. One of the persons, who was seen in the CCTV footages

was arrested by the police. His name was described as Avinash @ Aviraj Dede. He told the police in front of informant that Akshay wanted to marry Harshada, but because of love affair between Namdeo and Harshada, Akshay got angry. He alongwith accused Aditya, Mahadeo and the present applicant took Namdeo to Chimbli phata and there all of them assaulted Namdeo with wooden sticks and leather belt. As Namdeo became unconscious, he was taken to Sant Dnyaneshwar hospital. On these allegations FIR was lodged.

3. Heard, Mr. Satyavrat Joshi, learned counsel for the applicant as well as Ms. Kaushik, learned APP for the state.

4. The investigation was carried out and as mentioned earlier charge-sheet is already filed. With the assistance of learned counsel, I have gone through the entire charge-sheet. Mr. Joshi submitted that the statement given by the accused Avinash in the presence of police is not admissible under Section 25 of the Indian Evidence Act. He submitted that there is no recovery at the instance of the present applicant. He further submitted that the statement of Harshada is important. She has stated that she had

gone to the spot where the incident had occurred. At that time, Namdeo and others were present there but she has not mentioned the presence of the applicant. According to the prosecution, accused Akshay has made an extra judicial confession. Even there is no reference to the present applicant. He further submitted that charge-sheet does not contain any statement showing that the applicant was seen in the CCTV footage. He added that no test identification parade was held to enable the witnesses to identify the culprits. He, therefore, submitted that there is no offence made out against the applicant and he should be released on bail.

5. Learned APP opposed this application. She submitted that deceased Namdeo was taken to Dr. Gawde's dispensary first and thereafter he was taken to the Sant Dnyaneshwar Hospital. She submitted that the CCTV footage of Gawde dispensary does not show presence of the present applicant. However, CCTV footage of Sant Dnyaneshwar hospital does show the presence of the present applicant as one of the persons who had brought Namdeo to that hospital. She submitted that he was brutally assaulted and therefore bail should not be granted to the applicant.

6. I have considered all these submissions. The incident had occurred, according to the prosecution case, because the main accused Akshay was not happy with the friendship between Harshada and deceased. The incident had occurred at the behest of Akshay. The other accused including the present applicant did not have motive to assault the deceased. In this context, the evidence is to be seen. The FIR does mention that the accused Avinash was arrested immediately. He had stated before police that the applicant was present with other accused when Namdeo was assaulted. This portion, as rightly pointed out by the learned counsel for the applicant; 'is not admissible' because this confession was given by the accused before the police and not in presence of any magistrate.

7. There is no recovery of any incriminating article at the instance of the applicant. The test identification parade was not held to enable Dr. Gawde or the employees of Sant Dnyaneshwar hospital to identify the persons who had admitted Namdeo to the hospital. Though the learned APP claims that CCTV footage of Sant Dnyaneshwar Hospital shows the presence of the present

applicant, there is no supporting documents in the charge-sheet showing that the applicant was one amongst the persons, who had admitted the deceased in that hospital. Even assuming that the applicant was one of the persons who had admitted the deceased in that hospital, learned APP also stated that when the deceased was taken first to the Dr. Gawde dispensary, that CCTV footage did not show presence of the present applicant. Thus, at this stage, it can be argued that the present applicant could have joined other accused between the time when deceased was taken from Dr. Gawde's dispensary to Sant Dnyaneshwar hospital. However, this fact will have to be established during the trial.

8. The postmortem notes show that the deceased had suffered as many as nineteen injuries, which were in the nature of contusions. There were multiple fractures on ribs. There was assault on head and the cause of death was blunt trauma to chest. The fact that the deceased was assaulted by Akshay and others, at this stage, could not be denied. However, the complicity of the present applicant will have to be tested from the material in the charge-sheet. In this context, the statement of Harshada is very

important. She had gone to the spot of incident at the instance of Akshay. At that time, she had seen accused Avinash, Aditya More as well as Namdeo together. At that time, Namdeo had already suffered injuries. His shirt was stained with blood. At that time, Akshay had confronted her in respect of her friendship with Namdeo. Namdeo and Harshada tried to convince Akshay that there was nothing objectionable in their friendship. She has further stated that the accused Aditya and Mahadeo thereafter went away and came back with a fresh T-shirt. Namdeo was asked to wear that T-shirt. After that, accused Akshay and Mahadeo kept Namdeo on Namdeo's own two wheeler and took him to dispensary. She has further stated that she herself, Akshay and accused Avinash then left the place on a two wheeler. Thus, her statement is specific. She has named accused Aditya, Mahadeo and Avinash, besides the main accused Akshay. Apart from these four, she has not spoken a word about the fifth person. The present applicant was neither named nor presence of any other person was stated by her. Therefore, considering this important circumstances, at this stage, there is considerable force in the submission of Mr. Joshi

that the present applicant was not present at the spot when the incident happened.

9. In this view of the matter, applicant has made out a case for his release on bail. Hence, the following order:-

ORDER

(i) The Applicant is directed to be released on bail in connection with C.R. No. 816/18 registered at Chakan 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) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)