

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 1060 OF 2018**

Jagdish Balwant Thete

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

CRIMINAL APPLICATION NO. 861 OF 2018**IN****BAIL APPLICATION NO. 1060 OF 2018**

Vinod Suddam Bhor

....Applicant

IN THE MATTER BETWEEN-

Jagdish Balwant Thete

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Rajiv Patil, Senior Advocate I/by Mr. B.G. Tangsali for the Applicant.

Mr. Nitin Pradhan, Special Public Prosecutor a/w Mr. S.S. Hulke APP, for the Respondent-State.

Mr. Aniket Nikam a/w Mr. Nihal Mansuri I/by Aashish Satpute for the informant/intervenor.

Mr. Salgude, API Crime Branch, Unit-4, Ulhasnagar.

CORAM : A. S. GADKARI, J.**DATE : 22nd MARCH, 2019.****P.C.:-**

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. I-337 of 2015 dated 25th December, 2015 registered with Ambarnath Police Station, District Thane under Sections 302, 142, 143, 147, 148, 149, 341, 201, 120-(B) of the Indian Penal Code and Sections 4 and 25 of the Arms Act and under Sections 37(1), 135 of the Maharashtra Police Act.

2 Heard Shri. Rajiv Patil, the learned Senior Advocate for the Applicant, Mr. Nitin Pradhan, the learned Special Public Prosecutor for the State and Mr. Aniket Nikam, the learned counsel for the first informant. Perused the charge-sheet.

3 The first information report is lodged by Mr. Vinod Bhor.

It is the prosecution case that, due to earlier enmity, competition in the business and for establishing supremacy in the business of contract labour supply in the vicinity, the accused persons committed murder of Ramesh @ Pappu Gunjal (deceased) on 25th December 2015, between 10.15 a.m. to 10.30 a.m near Akhtar Hair Cutting Saloon situated at Moriwali Naka, Ambarnath (West). During the course of investigation, the Applicant came to be arrested on 21st November 2016 and after completion of investigation, police have submitted charge-sheet.

4 Mr. Patil, the learned senior Counsel appearing for the Applicant submitted that, except the presence of Applicant at the scene of offence as has been mentioned by the first informant, the other seven eye-witnesses have not even named him. He further submitted that, co-accused namely Sandip @ Pintya Gaikar has allegedly given an extra judicial confession to witness Mrs. Jyoti Devare and even in the said extra judicial confession, the name of the Applicant is not mentioned.

 He further submitted that, though it is stated in the first information report that, Ramesh @ Pappu Gunjal (deceased) while on the way to the hospital has given an oral dying declaration to the first informant naming three accused persons therein, the said oral dying declaration cannot be believed in view of the fact that, the Medical Certificate issued by the Doctors attached to Ashwini Hospital have mentioned that, the *'Neck region CLW packing with cotton Gauze, after packing'* and therefore, it was not possible for the deceased even to speak, least to give such a declaration.

 He further submitted that the statement of a witness through whom it is alleged by the prosecution that he overheard the conspiracy which was hatched by the accused persons herein,

cannot be relied upon as the said person though claimed to be well-wisher of the deceased, did not inform the said fact to him to avert the entire incident.

He further fairly pointed out that, there are two cases which are *sub-judice* against the Applicant along with co-accused under Sections 323, 338 and 506 and other allied sections of the Indian Penal Code. He submitted that, the investigation of the present crime is already completed and no fruitful purpose will be served by further detaining the Applicant in Jail. He, therefore, prayed that the Applicant may be released on bail.

5 *Per contra*, Shri. Pradhan, the learned Special Public Prosecutor vehemently opposed the Application and submitted that, the statement of the first informant Shri. Vinod Bhor is fully reliable and trustworthy. He submitted that, the said witness has narrated whatever he has seen after rushing to the said spot and therefore, except making reference about the presence of the Applicant, he has not further attributed overt act to the Applicant. He submitted that, therefore, the statement of the said witness lends credence about his presence at the scene of offence and his observing the entire incident.

He further submitted that, there is multifariousness of motive with different accused persons who have ganged up together to eliminate the Ramesh @ Pappu Gunjal (deceased) and the said fact can clearly be discerned from the statement of Shri. Pramod Rasal who is a witness to the conspiracy hatched by the accused persons.

He further submitted that, the Applicant had assured other accused persons of taking their care after eliminating Ramesh @ Pappu Gunjal (deceased). He further submitted that, the Applicant was absconding for about 11 months after commission of the present crime. He submitted that, the CDR record and the tower location of the mobile phone of the Applicant clearly indicates the presence of the Applicant at the scene of offence on the date and time of the incident. He submitted that, in view of the material available on record showing complicity of the Applicant in the present crime, the Application for bail may be rejected.

The learned counsel appearing for the first informant supported the arguments of Mr. Pradhan.

6 A minute perusal of charge-sheet would indicate that, the first informant Shri Vinod Bhor, except making a reference of the Applicant about his presence as one of the accused persons at the

scene of offence at the time of incident, and by further making a general statement that, all the accused persons assaulted deceased, has not attributed any specific overt act to the Applicant. The first informant has categorically stated that co-accused Shankar Chawadi was holding chopper, Pintya Gaikar was holding a sword and Ramdas Gaikar and Omkar Gaikar were holding choppers in their hands.

It is to be noted here that, as per the charge-sheet there are other seven eye-witnesses. Except the first informant, the other seven eye-witnesses do not even refer the presence of the Applicant at the scene of the offence. It is thus, clear that except the solitary witness mentioning the presence of the Applicant at the scene of offence, there is no other witness to corroborate the same.

7 As far as the oral dying declaration given by deceased to the first informant while on the way to the hospital is concerned, I *prima facie* find substance in the contention of the learned counsel for the Applicant. The Medical Certificate issued by Ashwini Hospital mentions the fact as narrated hereinabove. The said Certificate further mentions that, the condition of the patient was very serious and therefore, he was immediately referred to the Higher Center. The post-mortem report of the deceased indicates that, he suffered in all

20 injuries and most of them are either CLWs or deep incised cutting wounds, coupled with fractures at occipital, scalp and temporal bone region. Thus, *prima facie*, it appears that, it was difficult for the deceased to give such an oral dying declaration to the informant.

As far as the extra judicial confession given by the co-accused Sandip @ Pintya Gaikar to Smt. Jyoti Devare is concerned, the name of the Applicant therein as a co-accused is silent and therefore, the said circumstance *qua* the Applicant needs to be kept aside for consideration at this stage.

8 This leads me to consider the statement of witness Mr. Pramod Rasal who claims to be a witness to the conspiracy which was hatched on 23rd December, 2016 at about 9.30 p.m. in the house of co-accused Gurunath Gaikar. It is to be noted here that, the statement of the said witness is recorded after about 48 days from the date of commission of the offence. The said witness claims to be well-wisher of the Ramesh @ Pappu Gunjal (deceased), however, he did not inform the said fact of conspiracy immediately to the deceased Ramesh @ Pappu Gunjal (deceased) neither approached the police immediately after the commission of offence and has though it fit to give his statement to police after a gap of about 48 days.

9 In view of the above, the Applicant can be released on bail.

Hence, the following order.

- a) The Applicant be released on bail in CR No. I-337 of 2015 dated 25th December, 2015 registered with Ambarnath Police Station, District Thane on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- b) The Applicant shall attend all the dates before the Trial Court unless precluded on medical reasons.
- c) Any two consecutive defaults in complying with the afore-stated conditions will attract the provisions of cancellation of bail.
- d) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.
- e) Application is allowed in the aforesaid terms.

10 In view of the disposal of the Bail Application No. 1060 of 2018, the Application No. 861 of 2018 for Intervention does not survive and is accordingly disposed of.

(A.S. GADKARI, J.)