

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Bail Application NO. 1436 OF 2019

Baburam Sitalaprasad Giri

...Applicant

Versus

The State Of Maharashtra

...Respondent

....

Ms. Priyanka Chavan, Advocate for the Applicant.

Ms. A.A. Takalkar, APP, for the Respondent – State.

....

CORAM : SARANG V. KOTWAL, J.

DATE : 15th OCTOBER, 2019

PC.

1. The applicant is seeking his release on bail in connection with C.R. No.364/2018 registered with MIDC Bhosari Police Station, Pune, on 12.10.2018, under Sections 302, 323, 504 read with 34 of I.P.C. and Section 37 read with 135 of the Maharashtra Police Act.

2. The applicant was arrested on 12.10.2018 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

3. The prosecution case pertains to the murder of one Vinod Giri, who was assaulted by knife by one Dayaram Giri. The

allegations are that the applicant and one more co-accused Jayprakash Giri were on the spot when the incident had taken place.

4. The FIR is lodged by Aakash Giri, son of the deceased Vinod Giri. Aakash has stated in his FIR that in the night between 11th and 12th October, 2018, he heard the shouts of his father. The informant was at some distance from his house. He ran towards the house. He saw that the applicant, Dayaram Giri and Jayprakash Giri were abusing his father and were assaulting him with kick and fist blows. At that time, Dayaram gave a blow with the knife on his father's thigh. Vinod was pushed in the gutter. Thereafter all the three accused ran away from the spot. The informant and others removed the injured Vinod to YCM Hospital, Pimpri. While taking treatment, Vinod succumbed to the injuries. Therefore, this FIR is lodged.

5. I have heard Ms. Priyanka Chavan, learned Counsel for the applicant and Ms. A.A. Takalkar, learned A.P.P. for the State.

6. Learned Counsel for the applicant submitted that the statements of all the eye witnesses show that the applicant and

others were initially assaulting the deceased with kick and fist blows. Suddenly Dayaram took out a knife and gave blow on Vinod's thigh. Therefore, at this stage, it cannot be said that the applicant shared common intention with Dayaram. She submitted that the applicant is already in custody since 12.10.2018. The offence of murder cannot be attributed to him. She, therefore, prays for release of the applicant on bail.

7. Learned A.P.P. opposes this application. She submitted that there are in all five eye witnesses who have consistently deposed the same story and, therefore, at this stage there was sufficient evidence against the applicant.

8. I have considered all these submissions and read the statements of all the eye witnesses. Besides the first informant, there are four other eye witnesses. One Chetan Nanavare has stated that the accused i.e. the applicant, Dayaram and Jayprakash were quarreling with the deceased Vinod. They were abusing him and were manhandling him. This witness and one Sandip Yadav tried to intervene in the quarrel. However, the accused were not paying heed and they continued assaulting Vinod. In the

meantime, Dayaram went in the house and brought some weapon. He assaulted Vinod with that weapon. Vinod fell down. The accused pushed him in the gutter and ran away. Then the deceased was removed to the hospital.

9. Sandip Yadav is another eye witness. He has also narrated the similar incident in the same fashion. However, he has not stated that Dayaram had gone inside the house to bring a knife.

10. There are statements of daughter and widow of the deceased Vinod. The daughter has simply stated that all the accused assaulted the deceased. Sushila Vinod Giri, who was widow of the deceased, has stated that while the fight was going on, Dayaram went to his house and brought a knife and gave a blow on Vinod's leg. At that time, the applicant and Jayprakash had held her husband. After that her husband was pushed in the gutter and the accused persons ran away.

11. Apart from these eye witnesses, there is no other circumstance against the present applicant. There is also no recovery at his instance. Therefore, at this stage, the main evidence

against the applicant is the statements of five eye witnesses. The postmortem notes show that the deceased Vinod had suffered one solitary injury on his right thigh.

12. Considering the statements of eye witnesses, it is clear that some fight on some petty issue was going on. The applicant was not carrying any weapon. During the incident, another accused Dayaram went inside his house and brought a knife and gave one blow on the thigh of the deceased. Though this is a matter of trial, at this stage, it is difficult to observe that the applicant had shared any common intention with Dayaram to commit such an injury which in all probability would cause his death in the ordinary course of the nature. The applicant had not used any weapon.

13. In this view of the matter, since the applicant is in custody since 12.10.2018, I am inclined to grant bail to the applicant. Hence, the following order :

ORDER

- (i) The applicant is directed to be released on bail in connection with C.R. No.364/2018 registered

with MIDC Bhosari Police Station, Pune, on his furnishing a 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.)